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Pages 17887–18262

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 19, 2005
9:00 a.m.–Noon—(SESSION FULL)

Tuesday, May 17, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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Presidential Documents

Title 3—

The President

Proclamation 7884 of April 5, 2005

Cancer Control Month, 2005

By the President of the United States of America

A Proclamation

We are making great gains in the fight against cancer. Advances in prevention, early detection, and treatment are reducing cancer rates and increasing the likelihood of survival. Despite this progress, cancer remains the second leading cause of death in America. During Cancer Control Month, we continue to work to learn more about cancer prevention and detection, promote efforts to find better treatments and a cure, and support cancer patients, survivors, and their families.

A healthy lifestyle can lower the risk of developing certain types of cancer. This year, the Department of Health and Human Services released new *Dietary Guidelines for Americans 2005,* which emphasize reducing caloric intake, eating healthy foods, and increasing physical activity. I encourage all Americans to follow these guidelines, to use sunscreen and limit exposure to the sun, and to avoid tobacco and alcohol abuse. I also urge citizens to talk with their doctors about their cancer risk and to get regular check-ups and preventive screenings. Detecting cancer early increases survival rates and saves lives.

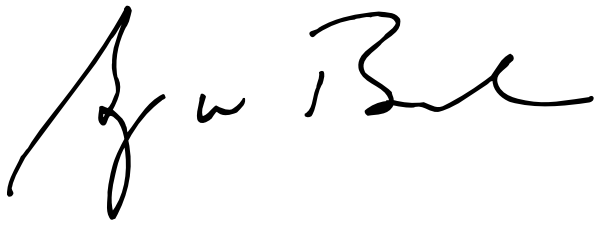
There are nearly 9.8 million cancer survivors in the United States today because of advances in health care. Aggressive funding will lead scientists to earlier diagnoses and improved treatments for lung, colorectal, and other cancers. My Administration proposed more than $5.6 billion for cancer prevention, treatment, and research through the National Institutes of Health in my fiscal year 2006 budget. These funds will help scientists learn more about this devastating disease and offer new hope for countless Americans and their families.

As we observe this month, we honor cancer survivors for their inspiring examples of courage, steadfast strength, and willingness to share their stories and experiences with others. We recognize the families, friends, and loved ones who support and encourage those living with cancer. And we remain grateful to our scientists and medical professionals, who make America's health care system the best in the world. Together, we can help all our citizens live healthier, longer lives.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) as amended, requesting the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim April 2005 as Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that raise awareness about how all Americans can prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of April, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–7261
Filed 4–7–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20514; Directorate Identifier 2005–CE–08–AD; Amendment 39–14025; AD 2005–07–01]

RIN 2120–AA64

Airworthiness Directives; the Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005–07–01, which was published in the **Federal Register** on March 25, 2005 (70 FR 15223), and applies to all the Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. We incorrectly referenced the affected airplane models as C208 and C208B throughout the document. The correct airplane models are 208 and 208B. This action corrects the regulatory text.

DATES: The effective date of this AD remains March 29, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Aerospace Engineer (Icing), FAA, Small Airplane Directorate, c/o Atlanta Aircraft Certification Office (ACO, One Crown Center, 1985 Phoenix Boulevard, Suite 450, Atlanta, GA 30349; telephone: (770) 703–6064; facsimile: (770) 703-6097.

SUPPLEMENTARY INFORMATION:

Discussion

On March 21, 2005, FAA issued AD 2005–07–01, Amendment 39–14025 (70 FR 15223, March 25, 2005), which applies to all the Cessna Models 208 and 208B airplanes.

We incorrectly referenced the affected airplane models as C208 and C208B throughout the document. The correct airplane models are 208 and 208B. This action corrects the regulatory text.

This AD requires you to incorporate information into the applicable section of the Airplane Flight Manual (AFM) to assure that the pilot has enough information to prevent loss of control of the airplane while in-flight during icing conditions.

Need for the Correction

This correction is needed to ensure that the affected airplane models numbers are correct and to eliminate misunderstanding in the field.

Correction of Publication

■ Accordingly, the publication of March 25, 2005 (70 FR 15223), of Amendment 39–14025; AD 2005–07–01, which was the subject of FR Doc. 05–5915, is corrected as follows:

■ Starting on page 15223 through page 15227, replace all references to Models C208 and C208B airplanes with Models 208 and 208B airplanes.

§ 39.13 [Corrected]

■ On page 15225, in § 39.13 [Amended], in paragraph (c), replace Models C208 and C208B with Models 208 and 208B.

■ On page 15226, in § 39.13 [Amended], in paragraph (e)(1), replace Model C208 airplanes and Model C208B airplanes with Model 208 airplanes and Model 208B airplanes.

■ On page 15226, in § 39.13 [Amended], in paragraphs (e)(2) and (e)(3), replace Model C208 airplanes with Model 208 airplanes.

■ On page 15226, in § 39.13 [Amended], in paragraphs (e)(4) and (e)(5), replace Model C208B airplanes with Model 208B airplanes.

■ Action is taken herein to correct this reference in AD 2005–07–01 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains March 29, 2005.

Issued in Kansas City, Missouri, on April 1, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–7052 Filed 4–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1981

RIN 1218–AC12

Procedures for the Handling of Discrimination Complaints Under Section 6 of the Pipeline Safety Improvement Act of 2002

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of regulations governing the employee protection (''whistleblower'') provisions of Section 6 of the Pipeline Safety Improvement Act of 2002 (''Pipeline Safety Act''), enacted into law December 17, 2002. This rule establishes procedures and time frames for the handling of discrimination complaints under the Pipeline Safety Act, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (''OSHA''), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (''ALJ'') for a hearing *de novo,* hearings by ALJs, review of ALJ decisions by the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This final rule is effective on April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Richard E. Fairfax, Director, Directorate of Enforcement Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3112, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2100.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline Safety Improvement Act of 2002 (''Pipeline Safety Act''), Public Law 107–355, was enacted on December 17, 2002. Section 6 of the Act, codified at 49 U.S.C. 60129, provides protection to employees against retaliation by an employer, defined as a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, because they provided

information to the employer or the Federal Government relating to Federal pipeline safety violations or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any Federal law relating to pipeline safety, or because they are about to take any of these actions. These rules establish procedures for the handling of whistleblower complaints under the Pipeline Safety Act.

II. Summary of Statutory Procedures

The Pipeline Safety Act whistleblower provisions include procedures that allow a covered employee to file, within 180 days of the alleged discrimination, a complaint with the Secretary of Labor (''the Secretary'').[1] Upon receipt of the complaint, the Secretary must provide written notice both to the person or persons named in the complaint alleged to have violated the Act (''the named person'') and to the Secretary of Transportation of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the named person throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation. However, the Secretary may conduct an investigation only if the complainant has made a *prima facie* showing that the alleged discriminatory behavior was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

After investigating a complaint, the Secretary will issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings, along with a preliminary order which requires the named person to: Take affirmative action to abate the violation, reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as costs and attorney's and expert fees reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued. The complainant and the named person then have 60 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under the Pipeline Safety Act will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an administrative law judge is not requested within 60 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, the Pipeline Safety Act requires the hearing to be conducted ''expeditiously.'' The Secretary then has 90 days after the ''conclusion of a hearing'' in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the named person may enter into a settlement agreement which terminates the proceeding. At the complainant's request, the Secretary will assess against the named person a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer a reasonable attorney's fee, not exceeding $1,000, if he or she finds that the complaint is frivolous or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. Finally, the Pipeline Safety Act makes persons who violate these newly created whistleblower provisions subject to a civil penalty of up to $1,000. This provision is administered by the Secretary of Transportation.

III. Summary and Discussion of Regulatory Provisions

On April 5, 2004, the Occupational Safety and Health Administration published in the **Federal Register** an interim final rule promulgating rules that implemented section 6 of the Pipeline Safety Improvement Act of 2002 (''Pipeline Safety Act''), Public Law 107–355, 69 FR 17587–17595. In addition to promulgating the interim final rule, OSHA's notice included a request for public comment on the interim rules by June 4, 2004.

OSHA did not receive any substantive comments during the public comment period. Nor does OSHA believe that modifications to the interim final rule are necessary. Accordingly, the interim final rule published on April 4, 2004, will be repromulgated as the final rule.

Section 1981.100 Purpose and Scope

This section describes the purpose of the regulations implementing the Pipeline Safety Act and provides an overview of the procedures covered by these regulations.

Section 1981.101 Definitions

In addition to general definitions, the regulations contain the Pipeline Safety Act definition of ''employer,'' and the statutory definitions of ''gas pipeline facility,'' ''hazardous liquid pipeline facility,'' ''person,'' and ''pipeline facility'' codified in chapter 601 of subtitle VIII of title 49 of the United States Code.

Section 1981.102 Obligations and Prohibited Acts

This section describes the several categories of whistleblower activity that are protected under the Act and the type of conduct that is prohibited in response to any protected activity. As under the Energy Reorganization Act (''ERA'') and the environmental whistleblower statutes listed at 29 CFR 24.1(a), refusals to engage in practices made unlawful under applicable Federal law relating to the industry in which the employee is employed are protected activities under the Act if the employee has identified the alleged illegality to the employer. See 49 U.S.C. 60129(a)(1)(B); *Timmons* v. *Franklin Electric Cooperative,* Case No. 97–141, 1998 WL 917114 (DOL Adm. Rev. Bd, Dec. 1, 1998); 29 CFR 24.2(c)(2). The employee does not have to prove that the allegedly illegal practice actually violated a Federal pipeline safety law. See *Gilbert* v. *Federal Mine Safety & Health Review Commission,* 866 F.2d 1433, 1439 (DC Cir. 1989). The employee must only prove that the refusal to work was properly communicated to the employer

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 5–2002 (67 FR 65008, October 22, 2002); Secretary's Order 1–2002 (67 FR 64272, October 17, 2002). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. See Secretary's Order 1–2002.

and was based on a reasonable and good faith belief that engaging in that work was a practice made unlawful by a Federal law relating to pipeline safety. See *Liggett Industries, Inc.* v. *Federal Mine Safety and Health Review Commission,* 923 F.2d 150, 151 (10th Cir. 1991); *Eltzroth* v. *Amersham Medi-Physics, Inc.,* Case No. 98–002, 1999 WL 232896 *9 (DOL Adm. Rev. Bd, Apr. 15, 1999).

Section 1981.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint under the Pipeline Safety Act. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under the Act must be made in writing, but do not needto be made in any particular form. With the consent of the employee, complaints may be made by any person on the employee's behalf.

Section 1981.104 Investigation

The Pipeline Safety Act contains the statutory requirement that a complaint shall be dismissed if the complaint, supplemented as appropriate by interviews with the complainant, fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the statutory requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. Upon receipt of a complaint in the investigating office, the Assistant Secretary notifies the named person of these requirements and the right of each named person to seek attorney's fees from an ALJ or the Administrative Review Board if the named person alleges that the complaint was frivolous or brought in bad faith.

Under this section also, the named person has the opportunity within 20 days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of its position. If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that an award of preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within 10 business days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments as to why preliminary relief is not warranted. This section provides due process procedures in accordance with the United States Supreme Court decision under the Surface Transportation Assistance Act (''STAA'') in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987).

Section 1981.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding whether there is reasonable cause to believe that the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief. The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 60 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed. Legislative history under the Pipeline Safety Act indicates that Congress intended to assure that the mere filing of an objection would not automatically stay the preliminary order, but that an employer could file a motion for a stay. 148 Cong. Rec. S11068 (Nov. 14, 2002) (section-by-section analysis). Thus, § 1981.106(b)(1) of this rule provides that although the portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order, the named person may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order. OSHA believes, however, that a stay of a preliminary reinstatement order would be appropriate only in the exceptional case. In other words, a stay only would be granted where the named person can establish the necessary criteria for equitable injunctive relief, *i.e.*, irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public.

Where the named party establishes that the complainant would have been discharged even absent the protected activity, there would be no reasonable cause to believe that a violation has occurred. Therefore, a preliminary reinstatement order would not be issued. Furthermore, a preliminary order of reinstatement would not be an appropriate remedy where, for example, the named party establishes that the complainant is, or has become, a security risk based upon information obtained after the complainant's discharge in violation of the Pipeline Safety Act. In *McKennon* v. *Nashville Banner Publishing Co.,* 513 U.S. 352, 360–62 (1995), the Supreme Court recognized that reinstatement would not be an appropriate remedy for discrimination under the Age Discrimination in Employment Act where, based upon after-acquired evidence, the employer would have terminated the employee upon lawful grounds. Finally, in appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such ''economic reinstatement'' frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. See, *e.g.*, *Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020 **1 (June 26, 2001). ''Economic reinstatement'' also might be appropriate on those occasions in which an employer can establish that sufficient independent grounds exist for staying an immediate order of preliminary reinstatement.

Section 1981.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC, within 60 days of receipt of the findings. The date of the postmark, facsimile transmittal, or e-mail communication is considered the date of the filing; if the filing of objections is made in person, by hand-delivery or other means, the date of receipt is considered the date of the filing.

The filing of objections is also considered a request for a hearing before an ALJ. This section also provides that a named party seeking attorney's fees for the filing of a frivolous complaint or a complaint brought in bad faith should initially make its request for such fees to the Chief Administrative Law Judge.

Section 1981.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR Part 18, Subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary.

Section 1981.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and OSHA's participation in the administrative litigation is not a prerequisite for the protection of the public interest served by these proceedings. The Department believes this is likely to be the situation in cases involving allegations of retaliation for providing pipeline safety information. Therefore, this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative litigation. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case at any stage of the administrative proceeding; petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the Administrative Review Board proceeding. We anticipate that ordinarily the Assistant Secretary will not participate in Pipeline Safety Act proceedings, except to approve settlements as described in 29 CFR 1981.111(d). However, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Department of Transportation, at that agency's discretion, also may participate as amicus curiae at any time in the proceedings. OSHA believes it is unlikely that its decision ordinarily not to prosecute meritorious Pipeline Safety Act cases will discourage employees from making complaints about pipeline safety.

Section 1981.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1981.104 is not subject to review by the ALJ, who hears the case de novo on the merits.

Section 1981.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary unless a timely petition for review is filed with the Administrative Review Board. Appeals to the Board are not a matter of right, but rather petitions for review are accepted at the discretion of the Board. Upon the issuance of the ALJ's decision, the parties have 10 business days within which to petition the Board for review of that decision. The parties must specifically identify the findings and conclusions to which they take exception, or the exceptions are deemed waived by the parties. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If the Board grants the petition, the Act requires the Board to issue a decision not later than 90 days after the date of the conclusion of the hearing before the ALJ. The conclusion of the hearing for this purpose is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provisions of STAA and the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. See 29 CFR 1978.109(b)(3) and 1979.110(b).

As with § 1981.106(b)(1), § 1981.110(b) of this rule provides that in the exceptional case, the Board may grant a motion to stay a preliminary order of reinstatement that otherwise will be effective while review is conducted by the Board. As explained above, however, OSHA believes that a stay of a preliminary reinstatement order would only be appropriate where the named person can establish the necessary criteria for equitable injunctive relief, *i.e.*, irreparable injury, likelihood of success on the merits, and a balancing of possible harms to the parties and the public.

Section 1981.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1981.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the

appropriate court pursuant to the rules of such court.

Section 1981.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1981.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a discrimination complaint, § 1981.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments was not required for these regulations, which provide procedures for the handling of discrimination complaints. Although this rule was not subject to the notice and comment procedures of the APA, the Assistant Secretary provided the public with an opportunity to submit comments on the interim rule. No substantive comments on the rule were received.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this final rule. It is unnecessary to delay the effective date of the final rule because no changes have been made to the interim final rule, which already has been in effect since April 5, 2004.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because the Pipeline Safety whistleblower provision is a new program and because of the importance to the Department of Transportation's pipeline safety program that ''whistleblowers'' be protected from retaliation. Executive Order 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may ''have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(3)(C)), and does not require Congressional review. Finally, this rule does not have ''federalism implications.'' The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of the Pipeline Safety Act, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Acting Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1981

Administrative practice and procedure, Employment, Investigations, Pipelines, Pipeline safety, Reporting and Record keeping requirements, Safety, Transportation, Whistleblowing.

Signed at Washington, DC this 30th day of March, 2005.

Jonathan L. Snare,

Acting Assistant Secretary for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1981, which was published as an interim rule at 69 FR 17587, April 5, 2004, is adopted as final and republished without change as follows:

PART 1981–PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 6 OF THE PIPELINE SAFETY IMPROVEMENT ACT OF 2002

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 49 U.S.C. 60129; Secretary of Labor's Order 5–2002, 67 FR 65008 (October 22, 2002).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1981.100 Purpose and scope.

(a) This part implements procedures under section 6 of the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129 (''the Pipeline Safety Act''), which provides for employee protection

from discrimination by a person owning or operating a pipeline facility or a contractor or subcontractor of such person because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other provision of Federal law relating to pipeline safety.

(b) This part establishes procedures pursuant to the Pipeline Safety Act for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under the Pipeline Safety Act, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1981.101 Definitions.

Act or *Pipeline Safety Act* means section 6 of the Pipeline Safety Improvement Act of 2002, Public Law 107–355, December 17, 2002, 49 U.S.C. 60129.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Employee means an individual presently or formerly working for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, an individual applying to work for a person owning or operating a pipeline facility or a contractor or subcontractor of such a person, or an individual whose employment could be affected by a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

Employer means a person owning or operating a pipeline facility or a contractor or subcontractor of such a person.

Gas pipeline facility includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

Hazardous liquid pipeline facility includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

Named person means the person alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means a corporation, company, association, firm, partnership, joint stock company, an individual, a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.

Pipeline facility means a gas pipeline facility and a hazardous liquid pipeline facility.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1981.102 Obligations and prohibited acts.

(a) No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (5) of this section.

(b) It is a violation of the Act for any employer to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide or cause to be provided to the employer or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety;

(2) Refused to engage in any practice made unlawful by chapter 601, in subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(3) Provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or testimony in any proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety;

(4) Commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety; or

(5) Assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law relating to pipeline safety.

(c) This part shall have no application to any employee of an employer who, acting without direction from the employer (or such employer's agent), deliberately causes a violation of any requirement relating to pipeline safety under chapter 601, subtitle VIII of title 49 of the United States Code or any other Federal law.

§ 1981.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an employer in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-

mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery or other means, the complaint is filed upon receipt.

(e) *Relationship to section 11(c) complaints.* A complaint filed under the Pipeline Safety Act that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of the Pipeline Safety Act will be deemed to be a complaint filed under both the Pipeline Safety Act and section 11(c). Normal procedures and timeliness requirements for investigations under the respective laws and regulations will be followed.

§ 1981.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section and paragraph (e) of § 1981.110. A copy of the notice to the named person will also be provided to the Department of Transportation.

(b) A complaint of alleged violation shall be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, an investigation of the complaint shall not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same 20 days, the named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of title 29 of the Code of Federal Regulations.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1981.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person will present this evidence within 10 business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1981.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary shall issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she shall accompany the findings with a preliminary order providing relief to the complainant. The preliminary order shall include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate. At the complainant's request the order shall also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the

findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the administrative law judge, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order will be effective 60 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1981.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1981.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file any objections and/or a request for a hearing on the record within 60 days of receipt of the findings and preliminary order pursuant to paragraph (b) of § 1981.105. The objection or request for attorney's fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001 and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which shall not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order. The named person may file a motion with the Office of Administrative Law Judges for stay of the Assistant Secretary's preliminary order.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1981.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. Administrative law judges have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1981.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision approving or rejecting a settlement agreement between the complainant and the named person.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Secretary of Transportation may participate as amicus curiae at any time in the proceedings, at the Secretary of Transportation's discretion. At the request of the Secretary of Transportation, copies of all pleadings in a case must be sent to the Secretary of Transportation, whether or not the Secretary of Transportation is participating in the proceeding.

§ 1981.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1981.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including

attorney and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and will not be stayed by the filing of a timely petition for review with the Administrative Review Board. All other portions of the judge's order will be effective 10 business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1981.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within 10 business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board, unless the Board grants a motion to stay the order. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board shall be issued within 90 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1981.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether to approve the withdrawal. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 60-day objection period described in § 1981.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 60-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether to approve the withdrawal. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board will constitute

the final order of the Secretary and may be enforced pursuant to § 1981.113.

§ 1981.112 Judicial review.

(a) Within 60 days after the issuance of a final order by the Board (Secretary) under § 1981.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1981.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1981.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties, waive any rule or issue any orders that justice or the administration of the Act requires.

[FR Doc. 05–6925 Filed 4–7–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–03–036]

RIN 1625–AA01

Anchorage Grounds; Baltimore Harbor Anchorage Project

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the geographic coordinates and modifying the regulated use of the anchorages in Baltimore Harbor, MD. This amendment is necessary to ensure changes in depth and dimension to the Baltimore Harbor anchorages resulting from an Army Corps of Engineers anchorage-deepening project are reflected in the Federal regulations and on National Oceanic and Atmospheric Association charts. The modifications to the regulated uses of the anchorages accommodate changes to ships' drafts and lengths since the last revision of this regulation in 1968 and standardize the anchorage regulations throughout the Fifth Coast Guard District.

DATES: This rule is effective May 9, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–036 and are available for inspection or copying at Commander, Fifth Coast Guard District (oan), 431 Crawford Street, Portsmouth, VA, 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District Aids to Navigation and Waterways Management Branch, (757) 398–6285.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 2, 2003, we published a notice of proposed rulemaking (NPRM) entitled Baltimore Harbor Anchorage Project in the **Federal Register** (68 FR 39503). We received one phone call commenting on the NPRM. No public hearing was requested, and none was held.

On January 14, 2004 we published a supplemental notice of proposed rulemaking (SNPRM) also entitled Baltimore Harbor Anchorage Project in the **Federal Register** (69 FR 2095) to solicit for comments on updates made to Anchorage 2. No public hearing was requested, and none was held.

On October 12, 2004 we published a supplemental notice of proposed rulemaking (SNPRM) again entitled Baltimore Harbor Anchorage Project in the **Federal Register** (69 FR 60592) to better align the anchorages with the Federal navigation project. No comments were received on the SNPRM. No public hearing was requested, none was held.

Background and Purpose

The U.S. Army Corps of Engineers received Congressional authorization for the Baltimore Harbor Anchorage project in September 2001. Dredging for the Baltimore Harbor Anchorage was completed in May 2003. The objective of this project was to increase the project depths of Anchorage No. 3 and No. 4 to 42ft and 35ft respectively.

The original Federal anchorage project for Baltimore Harbor was designed to accommodate cargo ships with maximum drafts of 33ft and lengths of 550ft. The dimensions of the anchorages changed to accommodate the larger ships that call on the Port that routinely approach 1000ft length overall with drafts of 36 to 38 feet or more. The new coordinates established for Anchorage Nos. 2, 3, and 4, also accommodate the widening of the Dundalk West Channel, a north/south Federal navigation project located between Anchorage No. 3 and Anchorage No. 4 and widening of the Dundalk East Channel bordering Anchorage No. 4. Anchorage No. 3 was divided into two sections: Anchorage 3 Lower (2200′ x 2200′ x 42ft mean lower low water (MLLW)) and Anchorage 3 Upper (1800′ x 1800′ x 42ft MLLW). Anchorage No. 4 was also modified (1850′ x 1800′ x 35ft MLLW).

Discussion of Comments and Changes

One comment was received regarding the new coordinates of the anchorages in response to the NPRM (68 FR 39503). Three changes where made based on that comment. The longitude for the fourth coordinate in Anchorage 3 Upper listed as 76° 33′53.6″ W was changed to 76° 32′ 53.6″ W. In Anchorage 2, the sixth position incorrectly listed as 39° 14′43.7″ N, 76° 2′63.6″ W was changed to 39°14′43.7″ N, 76° 32′53.6″ W. Also in Anchorage 2, the second coordinate listed as 39° 14′43.9″ N, 76° 32′27.0″ W was excluded.

Two changes were made to the two northwestern coordinates in Anchorage 2 after the comment period for the NPRM had expired. Therefore, we issued a SNPRM to solicit comments. No comments were received.

Minor changes were made to the geographic points making up Anchorages 1, 2, 5, 6 and 7 to aid in the graphical representations of those anchorages and better align them with the Federal navigation project. One decimal place was added to all coordinates to better define the anchorage boundaries. Therefore, we published a second SNPRM to solicit comments on the changes. No comments were received.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The deepening of Anchorage No. 3 and Anchorage No. 4 within the Port of Baltimore accommodates deep draft vessels waiting for an open berth. The Coast Guard does not expect that these new regulations will adversely impact maritime commerce.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels used for chartering, taxi, ferry services, or any other marine traffic that transit this area of Fort McHenry Channel in Baltimore Harbor. Changes to Anchorage No. 3 and Anchorage No. 4 may change the vessel routing through this area of the harbor. Deepening the anchorages and changing the coordinates for the anchorages will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the new anchorage areas. The new coordinates for the anchorages are a change in dimension, the size of which will remain proportional to its current size, and their location will not interfere with commercial traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss possible effects of this rule in the section titled Small Entities in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the

Instruction, from further environmental documentation. This rule changes the size of Anchorage No. 2, Anchorage No. 3 and Anchorage No. 4 and modifies the regulated uses of these anchorages.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.158 revise paragraphs (a) and (b) and add paragraph (c) and (d) to read as follows:

§ 110.158 Baltimore Harbor, MD.

North American Datum 1983.

(a) *Anchorage Grounds.*

(1) *Anchorage No. 1, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°15′13.51″ N	76°34′07.76″ W
39°15′11.01″ N	76°34′11.69″ W
39°14′52.98″ N	76°33′52.67″ W
39°14″47.90″ N	76°33′40.73″ W

(ii) No vessel shall remain in this anchorage for more than 12 hours without permission from the Captain of the Port.

(2) *Anchorage No. 2, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′46.23″ N	76°33′25.82″ W
39°14′56.96″ N	76°33′37.15″ W
39°15′08.55″ N	76°33′37.65″ W
39°15′19.28″ N	76°33′24.49″ W
39°15′19.33″ N	76°33′14.32″ W
39°15′14.19″ N	76°32′57.76″ W
39°15′06.87″ N	76°32′45.48″ W
39°14′41.37″ N	76°32′27.38′ W
39°14′30.93″ N	76°32′33.52″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′43.76″ N	76°32′53.62″ W
39°14′57.51″ N	76°33′08.13″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(3) *Anchorage No. 3, Upper, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.48″ N	76°33′11.31″ W
39°14′46.23″ N	76°33′25.82″ W
39°14′57.51″ N	76°33′08.13″ W
39°14′43.76″ N	76°32′53.62″ W

(ii) No vessel shall remain in this anchorage for more than 24 hours without permission from the Captain of the Port.

(4) *Anchorage No. 3, Lower, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′32.48″ N	76°33′11.31″ W
39°14′46.27″ N	76°32′49.69″ W
39°14′30.93″ N	76°32′33.52″ W
39°14′24.40″ N	76°32′39.87″ W
39°14′15.66″ N	76°32′53.58″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(5) *Anchorage No. 4, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′52.91″ N	76°32′29.60″ W
39°14′05.91″ N	76°32′43.30″ W
39°14′07.30″ N	76°32′43.12″ W
39°14′17.96″ N	76°32′26.41″ W
39°14′05.32″ N	76°32′13.09″ W
39°14′00.46″ N	76°32′17.77″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(6) *Anchorage No. 5, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°14′07.89″ N	76°32′58.23″ W
39°13′34.82″ N	76°32′23.66″ W
39°13′22.25″ N	76°32′28.90″ W
39°13′21.20″ N	76°33′11.94″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(7) *Anchorage No. 6, general anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′42.98″ N	76°32′19.11″ W
39°13′20.65″ N	76°31′55.58″ W
39°13′34.00″ N	76°31′33.50″ W
39°14′01.95″ N	76°32′02.65″ W
39°13′51.01″ N	76°32′18.71″ W

(ii) No vessel shall remain in this anchorage for more than 72 hours without permission from the Captain of the Port.

(8) *Anchorage No. 7, Dead ship anchorage.*

(i) The waters bounded by a line connecting the following points:

Latitude	*Longitude*
39°13′00.40″ N	76°34′10.40″ W
39°13′13.40″ N	76°34′10.81″ W
39°13′13.96″ N	76°34′05.02″ W
39°13′14.83″ N	76°33′29.80″ W
39°13′00.40″ N	76°33′29.90″ W

(ii) The primary use of this anchorage is to lay up dead ships. Such use has priority over other uses. Permission from the Captain of the Port must be obtained prior to the use of this anchorage for more than 72 hours.

(b) *Definitions.* As used in this section: *Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50. *Dangerous cargo* means certain dangerous cargo as defined in Sec. 160.203 of this title.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and all vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except in cases where unforeseen circumstances create conditions of imminent peril, or with the permission of the Captain of the Port, no vessel shall be anchored in Baltimore Harbor and Patapsco River outside of the anchorage areas established in this section for more than 24 hours. No vessel shall anchor within a tunnel, cable or pipeline area shown on a government chart. No vessel shall be moored, anchored, or tied up to any pier, wharf, or other vessel in such manner as to extend into established channel limits. No vessel shall be positioned so as to obstruct or endanger the passage of any other vessel.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of an anchorage. Only the vessel that holds the revocable permit may use the anchorage during the period that the permit is in effect.

(5) Upon notification by the Captain of the Port to shift its position, a vessel

at anchor shall get underway and shall move to its new designated position within 2 hours after notification.

(6) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communication guards on selected radio frequencies.

(7) No vessel at anchor or at a mooring within an anchorage may transfer oil to or from another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this chapter.

(8) No vessel shall anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* (1) This paragraph (d) applies to every vessel, except a U.S. naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold a form of identification prescribed in the vessel's security plan.

(3) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the identification prescribed by paragraph (d)(2) of this section to any Coast Guard Boarding Officer who requests it.

(4) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(5) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a bravo flag in a prominent location and by night a fixed red light.

Dated: March 25, 2005.

Ben Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–6956 Filed 4–7–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0412; FRL–7691–8]

Buprofezin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of buprofezin in or on avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, birida, guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 0.30 parts per million (ppm); pome fruit at 0.30 ppm; peach at 9.0 ppm, meat (cattle, goat, hog, horse, and sheep) at 0.05 ppm; kidney (cattle, goat, hog, horse, and sheep) at 0.05 ppm.; lettuce, head at 5.0 ppm, Lettuce, leaf at 13.0 ppm, and Vegetable, cucurbit at 0.5 ppm; fruit, citrus, group 10 at 2.5 ppm; citrus, dried, pulp at 7.5 ppm; and citrus, oil at 80 ppm. Nichino America, Inc., Linden Park, Suite 501, 4550 New Linden Hill Road, Wilmington, DE 19808 requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 8, 2005. Objections and requests for hearings must be received on or before June 7, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0412. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Richard J. Gebken, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6701; e-mail address: *gebken.richard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of March 17, 2004 (69 FR 12676) (FRL–7347–1), EPA issued a notice pursuant to section

408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6636, 3E6741, and 3E6747) by Interregional Research Project Number (IR–4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 and Nichino America, Inc., Linden Park, Suite 501, 4550 New Linden Hill Road, Wilmington, DE 19808. The petition requested that 40 CFR 180.511 be amended by establishing a tolerance for residues of the insecticide buprofezin (2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one), in or on the raw agricultural commodities: Fruit, pome, group 11, except apple and apple, pomace at 4.0 parts per million (ppm) (PP 3E6636), apple at 1.2 ppm (PP 3E6636), apple, pomace at 2.5 ppm (PP 3E6636), peach, apricot, and nectarine at 3.0 ppm (PP 3E6741), and avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, biriba, guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 0.30 ppm (PP 3E6747).

In the **Federal Register** of June 21, 2000 (65 FR 38543) (FRL–6557–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F6087) by Nichino America, Inc., Linden Park, Suite 501, 4550 New Linden Hill Road, Wilmington, DE 19808, (formerly Aventis CropScience, formerly AgrEvo USA Company). The petition requested that 40 CFR 180.511 be amended by establishing a tolerance for residues of the insecticide buprofezin] (2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one), in or on the following meat commodities; (Cattle, goats, hogs, horse, and sheep at 0.05 ppm) and kidney commodities for (cattle, goats, hogs, horse, and sheep at 0.05 ppm) respectively.

In the **Federal Register** of December 22, 2004 (69 FR 76719) (FRL–7689–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6873) by Nichino America, Inc., Linden Park, Suite 501, 4550 New Linden Hill Road, Wilmington, DE 19808. The petition requested that 40 CFR 180.511 be amended by establishing increased tolerances for residues of buprofezin (2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one) in or on the following agricultural commodities: Fruit, citrus, Group 10 at 2.5 ppm); citrus, dried pulp at 7.5 ppm; and citrus, oil at 80 ppm.

In the **Federal Register** of December 23, 2004 (69 FR 76942) (FRL–7694–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F6887) by Nichino America, Inc., Linden Park, Suite 501, 4550 New Linden Hill Road, Wilmington, DE 19808. The petition requested that 40 CFR 180.511 be amended by establishing tolerances for residues of buprofezin (2-[(1,1-dimethylethyl)imino]tetrahydro-3-(1-methylethyl)-5-phenyl-4H-1,3,5-thiadiazin-4-one) in or on the following raw agricultural commodities: Head lettuce at 5 ppm, leaf lettuce at 13 ppm, and Vegetables, cucurbits, group 9 at 0.5 ppm.

Each respective notice included a summary of the petition prepared by the registrant Nichino America, Incorporated, 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, or the previous, registrant Aventis CropScience.

A private citizen responded to petitions PP 3E6636, 3E6741, 3E6747, 4F6873, and 4F6887. The substantive public comments and corresponding Agency responses are addressed in a separate document available in the docket for this action under Docket identification (ID) number OPP–2004–0362.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of buprofezin in or on avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, birida, guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola at 0.30 parts per million (ppm); pome fruit at 4.0 ppm; peach at 9.0 ppm, meat (cattle, goat, hog, horse, and sheep) at 0.05 ppm; kidney (cattle, goat, hog, horse, and sheep) at 0.05 ppm; Lettuce, head at 5.0 ppm, Lettuce, leaf at 13 ppm; Vegetable, cucurbit group 9 at 0.50 ppm; Fruit, citrus, Group 10 at 2.5 parts per million (ppm); Citrus, dried pulp at 7.5 ppm, and citrus, oil at 80 ppm.

EPA's assessment of exposures and risks associated with establishing the tolerance follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by buprofezin as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed are discussed in the **Federal Register** of June 25, 2003 (68 FR 37765) (FRL–7310–7).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory

animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

Three other types of safety or uncertainty factors may be used: ''Traditional uncertainty factors;'' the ''special FQPA safety factor;'' and the ''default FQPA safety factor.'' By the term ''traditional uncertainty factor,'' EPA is referring to those additional uncertainty factors used prior to FQPA passage to account for database deficiencies. These traditional uncertainty factors have been incorporated by the FQPA into the additional safety factor for the protection of infants and children. The term ''special FQPA safety factor'' refers to those safety factors that are deemed necessary for the protection of infants and children primarily as a result of the FQPA. The ''default FQPA safety factor'' is the additional 10X safety factor that is mandated by the statute unless it is decided that there are reliable data to choose a different additional factor (potentially a traditional uncertainty factor or a special FQPA safety factor).

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by an UF of 100 to account for interspecies and intraspecies differences and any traditional uncertainty factors deemed appropriate (RfD = NOAEL/UF). Where a special FQPA safety factor or the default FQPA safety factor is used, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk). An example of how such a probability risk is expressed would be to describe the risk as one in one hundred thousand (1×10^{-5}), one in a million (1×10^{-6}), or one in ten million (1×10^{-7}). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated.

A summary of the toxicological endpoints for buprofezin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 25, 2003 (68 FR 37765) (FRL–7310–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.511) for the residues of buprofezin, in or on a variety of raw agricultural commodities. Tolerances for residues of buprofezin are currently established for ruminant fat, meat byproducts, and liver at 0.05 ppm (40 CFR 180.511). Tolerances are being established for meat (cattle, goat, hog, horse, and sheep) at 0.05 ppm; and kidney (cattle, goat, hog, horse, and sheep) at 0.05 ppm; based on additional animal metabolism studies provided from Nichino America, Inc. Risk assessments were conducted by EPA to assess dietary exposures from buprofezin in food as follows:

i. *Acute and chronic exposure.* Acute dietary risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

In conducting the acute dietary risk assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™) (ver. 1.30) and Lifeline™ (ver. 2.00) models, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis assumed tolerance level residues, 100% crop treated for all uses, and DEEM™ (ver. 7.76) default processing factors for all registered/proposed commodities (Tier 1). The chronic analysis assumed DEEM™ (ver.7.76) default processing factors for all registered/proposed commodities and incorporated percent crop treated estimates and average field trial residues.

ii. *Cancer.* In accordance with the EPA Guidelines for Carcinogen Risk Assessment, the Carcinogen Assessment Review Commission classified buprofezin as having ''suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential'' based on liver tumors in female mice. The Committee further recommended no quantification of cancer risk.

iii. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

- 5% crop treated (PCT) for cantaloupes;
- 2.5% crop treated for cotton, grapefruit, grapes, lemons, limes, oranges, squash, tangelos, tangerines, tomatoes, and watermelon;
- Market share % crop treated was projected not to exceed 5% for apples, and 13% for peaches;
- All other crops currently registered and/or proposed commodities were assumed to be 100% crop treated.

The Agency believes that the three conditions listed in Unit C. 1. iii. have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. For previously registered crops, EPA used an average of the values from these surveys over the last 5 years for estimating PCT for chronic dietary

exposure assessments. For most newly registered crops, the Agency assumed 100% PCT. In estimating PCT for the apples and peaches as newly-registered crops, EPA assumed that the PCT for buprofezin would at least equal or exceed the PCT for the leading comparable insect growth regulatory pesticide alternative on that crop. For peaches, PCT for buprofezin was projected to potentially exceed the leading alternative's PCT by a factor of five because buprofezin has a slight cost advantage over the alternative on that crop. With regards to apples, buprofezin was projected to slightly exceed sales of the leading alternative's PCT because buprofezin is an excellent technical fit as an insect pest management (IPM) insecticide for apples. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation.

As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which buprofezin may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for buprofezin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of buprofezin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentrations in Groundwater (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to buprofezin they are further discussed in the aggregate risk sections in Unit E.

Based on the GENEEC, PRZM/EXAMS and SCI-GROW models, the EECs of buprofezin for acute exposures are estimated to be 19.2 parts per billion (ppb) for surface water and 0.1 ppb for ground water. The EECs for chronic exposures are estimated to be 4.5 ppb for surface water and 0.1 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Buprofezin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to buprofezin and any other substances and buprofezin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that buprofezin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's OPP concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's web site at http://www.epa.gov/pesticides/cumulative/.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. The Agency concluded that the available studies provided no indication of increased susceptibility of rats or

rabbits following *in utero* exposure or of rats following prenatal/postnatal exposure to buprofezin.

3. *Conclusion*. There is a complete toxicity data base for buprofezin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the EPA's Office of Water are used to calculate DWLOCs: 2 Liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to buprofezin will occupy 5.0% of the aPAD for females 13 to 19 years old. In addition, there is potential for acute dietary exposure to buprofezin] in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BUPROFEZIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–49 years old)	2.0	5	19.2	0.1	57,000

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, the chronic aggregate risk assessment takes into account average exposure estimates from dietary consumption of buprofezin (food and drinking water). However, there are no residential uses for buprofezin that result in chronic residential exposure to buprofezin. Therefore, the chronic aggregate risk assessment will consider exposure from food and drinking water only. There is potential for chronic dietary exposure to buprofezin in drinking water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BUPROFEZIN

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.01	38	4.5	0.1	220
All infants (<1 yr old)	0.01	64	4.5	0.1	36
Children (1–2 years old)	0.01	81	4.5	0.1	19
Youth (13–19 years old)	0.01	32	4.5	0.1	200
Adults (50 years + old)	0.01	39	4.5	0.1	21
Females (13–49 years old)	0.01	34	4.5	0.1	200

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Buprofezin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure

plus chronic exposure to food and water (considered to be a background exposure level). Buprofezin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. In chronic studies in the rat, an increased incidence of follicular cell hyperplasia and hypertrophy in the thyroid of males was reported. Increased relative liver weights were reported in female dogs. Buprofezin was not carcinogenic to male and female rats. In the mouse, increased absolute liver weights in males and females, along with an increased incidence of hepatocellular adenomas and hepatocellular adenomas plus carcinomas in females were reported. Buprofezin was negative in *in vitro* and *in vivo* genotoxicity assays. The findings from the published literature indicate that buprofezin causes cell transformation and induces micronuclei *in vitro*. In the absence of a positive response in an *in vivo* micronucleus assay, the Agency concluded that buprofezin may have aneugenic potential, which is not expressed *in vivo*. In sum, buprofezin was negative in the rat, negative for mutagenicity and negative for male mice; however, in female mice, a slight or marginal increase in combined adenomas and carcinomas was observed. Given these findings in the cancer and mutagenicity studies, EPA regards the carcinogenic potential of buprofezin as very low and concludes that it poses no greater than a negligible cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to buprofezin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Plants. Adequate enforcement methodology gas chromatography using nitrogen phosphorus detection is available to enforce the tolerance expression.

Livestock. The Agency has successfully validated method BF/11/97 for enforcement of the livestock tolerances and the method was forwarded to FDA's Technical Editing Group for publication in a future revision of the Pesticide Analytical Manual I (PAM I).

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue limits (MRLs) established for buprofezin in/on any of the commodities associated with the current petition. Therefore, harmonization is not relevant.

V. Conclusion

Therefore, the tolerance is established for residues of buprofezin, in or on avocado, papaya, star apple, black sapote, mango, sapodilla, canistel, mamey sapote, sugar apple, cherimoya, atemoya, custard apple, ilama, soursop, birida, guava, feijoa, jaboticaba, wax jambu, starfruit, passionfruit, and acerola] at 0.30 ppm; Fruit, Pome, Crop Group 11 at 4.0 ppm; Peach at 9.0 ppm; Meat (cattle, goat, hog, horse, and sheep) at 0.05 ppm; and Kidney (cattle, goat, hog, horse, and sheep) at 0.05 ppm; Lettuce, head at 5.0 ppm; Lettuce, leaf at 13 ppm; and Vegetable, cucurbit group 9 at 0.50 ppm; Fruit, citrus, Group 10 at 2.5 ppm; citrus, dried pulp at 7.5 ppm; and citrus, oil at 80 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days. A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0412 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 7, 2005.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in *ADDRESSES*. Mail your copies, identified by docket ID number OPP–2004–0412, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy

of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 29, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.511 is amended by revising the entries for ''Fruit, citrus''; ''Lettuce, head''; ''Lettuce, leaf''; and ''Vegetable, cucurbit'' and by alphabetically adding commodities in the table in paragraph (a) to read as follows:

§ 180.511 Buprofezin; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
Acerola	0.30	None
* * *	* * *	*
Atemoya	0.30	None
Avocado	0.30	None
* * *	* * *	*
Birida	0.30	None
Black sapote	0.30	None
Canistel	0.30	None
* * *	* * *	*
Cattle, kidney	0.05	None

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Cattle, meat	0.05	None
* *	* *	*
Cherimoya	0.30	None
* *	* *	*
Citrus, dried pulp	7.5	None
Citrus, oil	80	None
* *	* *	*
Custard, apple	0.30	None
Feijoa	0.30	None
Fruit, Citrus, Group 10	2.5	None
Fruit, Pome, Crop Group 11	4.0	None
* *	* *	*
Goat, kidney	0.05	None
Goat, meat	0.05	None
* *	* *	*
Guava	0.30	None
* *	* *	*
Hog, kidney	0.05	None
Hog, meat	0.05	None
* *	* *	*
Horse, kidney	0.05	None
Horse, meat	0.05	None
* *	* *	*
Ilama	0.30	None
Jaboticaba	0.30	None
* *	* *	*
Lettuce, head	5.0	None
Lettuce, leaf	13.0	None
Mamey sapote	0.30	None
Mango	0.30	None
* *	* *	*
Papaya	0.30	None
Passion fruit	0.30	None
Peach	9.0	None
* *	* *	*
Sapodilla	0.30	None
* *	* *	*
Sheep, kidney	0.05	None
Sheep, meat	0.05	None
* *	* *	*
Soursop	0.30	None
* *	* *	*
Star apple	0.30	None
Starfruit	0.30	None
Sugar apple	0.30	None
* *	* *	*
Vegetable, Cucurbit, Group 9	0.50	None
Wax jambu	0.30	None

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0054; FRL–7701–6]

Triflumizole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of triflumizole in or on parsley, leaves; dandelion, leaves; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese, napa; broccoli; and coriander, leaves (cilantro). This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on parsley; dandelion; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese, napa; broccoli; and coriander, leaves (cilantro). This regulation establishes maximum permissible levels for residues of triflumizole in these food commodities. These tolerances will expire and are revoked on June 30, 2008.

DATES: This regulation is effective April 8, 2005. Objections and requests for hearings must be received on or before June 7, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0054. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *Sec-18-Mailbox@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing time-limited tolerances for combined residues of the fungicide triflumizole and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on parsley, leaves at 9.0 parts per million (ppm); dandelion, leaves at 7.0 (ppm); swiss chard at 7.0 (ppm); collards at 9.0 ppm; kale at 9.0 ppm;

kohlrabi at 9.0 ppm; mustard greens at 9.0 ppm; cabbage, chinese, napa at 9.0 ppm; broccoli at 1.0 ppm; and coriander, leaves (cilantro) at 9.0 ppm. These tolerances will expire and are revoked on June 30, 2008. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Triflumizole on Various Commodities and FFDCA Tolerances

Texas has declared a crisis exemption under FIFRA section 18 for the use of triflumizole on parsley; dandelion; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese, napa; broccoli; and coriander, leaves (cilantro) for control of powdery mildew. Texas states the effective control of powdery mildew over the 70 to 90–day growing season requires two additional applications of a systemic pesticide beyond those permitted on the currently registered alternative labels.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of triflumizole in or on parsley; dandelion; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese napa; broccoli; and coriander, leaves (cilantro). In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary time-limited tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these time-limited tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on June 30, 2008, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on parsley, leaves; dandelion, leaves; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese napa; broccoli; and coriander, leaves (cilantro) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether triflumizole meets EPA's registration requirements for use on parsley; dandelion; swiss chard; collards; kale; kohlrabi; mustard greens; cabbage, chinese napa; broccoli; and coriander, leaves (cilantro) or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of triflumizole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Texas to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for triflumizole, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of triflumizole and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues of triflumizole in or on parsley, leaves at 9.0 parts per million (ppm); dandelion, leaves at 7.0 (ppm); swiss chard at 7.0 (ppm); collards at 9.0 ppm; kale at 9.0 ppm; kohlrabi at 9.0 ppm; mustard greens at 9.0 ppm; cabbage, chinese, napa; at 9.0 ppm; broccoli at 1.0 ppm; and coriander, leaves at 9.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members

of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). The Food Quality Protection Act of 1996 (FQPA) added to FFDCA section 408(b)(2)(C) an additional safety factor to protect children's health. Where this additional FQPA safety factor is retained, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non- linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for triflumizole used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLUMIZOLE FOR USE IN HUMAN RISK ASSESSMENT[1]

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13-50 years of age)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.1 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.1 mg/kg/day	Developmental Toxicity Study - Rat Developmental LOAEL = 35 mg/kg/day based on decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight, and increased incidences of cervical ribs
Acute Dietary (general U.S. population) (including infant and children)	NOAEL = 25 mg/kg/day UF = 100 Acute RfD = 0.25 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.03 mg/kg/day	Acute Neurotoxicity Study - Rat LOAEL = 100 mg/kg/day based on functional observational battery findings (neuromuscular impairment) and decreased locomotor activity
Chronic Dietary (all populations)	NOAEL= 1.5 mg/kg/day UF = 100 Chronic RfD = 0.015 mg/kg/day	FQPA SF = 1X cPAD = chronic/RfD FQPA SF = 0.015 mg/kg/day	Multi-generation Reproduction Study - Rat Reproductive LOAEL = 3.5 mg/kg/day based on increased gestation length in dams of the F_{3a} interval
Short-Term Oral (1-30 days) (Residential)	Oral NOAEL = 8.5 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation
Intermediate-Term Oral (1-6 months) (Residential)	Oral NOAEL = 8.5 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation and decreased body weight and body weight gain in parental animals
Short-Term Dermal (1-30 days) (Occupational/Residential)	Oral NOAEL= 8.5 mg/kg/day (dermal absorption rate = 3.5%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation
Intermediate- and Long-Term Dermal (1-6 months and 6 month or longer) (Occupational/Residential)	Oral NOAEL = 1.5 mg/kg/day (dermal absorption rate = 3.5%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 3.5 mg/kg/day based on increased gestation length in the dams of the F_{3a} interval

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR TRIFLUMIZOLE FOR USE IN HUMAN RISK ASSESSMENT[1]—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and Endpoint for Risk Assessment	Study and Toxicological Effects
Short-Term Inhalation (1-30 days) (Occupational/Residential)	Oral NOAEL= 8.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 21 mg/kg/day, based on decreased body weight gain in pups during lactation
Intermediate- and Long-Term Inhalation (1-6 months and 6 month or longer) (Occupational/Residential)	Oral NOAEL = 1.5 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Multi-generation Reproduction Study - Rat LOAEL = 3.5 mg/kg/day based on increased gestation length in the dams of the F_{3a} interval
Cancer (oral, dermal, inhalation)	Evidence for non-carcinogenicity for humans	Not applicable	Combined Chronic Toxicity/Carcinogenicity Study - Rat Carcinogenicity Study - Mouse No evidence of carcinogenicity in rats and mice

[1]UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.476) for the combined residues of triflumizole, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from triflumizole in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerance level residues and 100% crop treated for all registered and proposed uses.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A refined, chronic dietary exposure assessment was performed for the general U.S. population and various population subgroups using anticipated residues (ARs) from average field trial residues for apple, grape, pear, cherry, cucurbit, strawberry, and milk commodities; registered and proposed tolerances for all other commodities; percent crop treated (CT) information for apple, grape and pear commodities; and 100% CT information for all other uses.

iii. *Cancer*. Triflumizole has been classified as not likely to be carcinogenic to humans. Therefore, a quantitative exposure assessment was not conducted to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information*. Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

The Agency used PCT information for the registered uses on grape, apple, and pear. EPA based these assumptions on use data for the period 1996 to 1997 and 1998. For all other registered uses as well as these uses, EPA assumed that 100% of the U.S. crop would be treated with triflumizole.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this

consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which triflumizole may be applied in a particular area.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for triflumizole in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of triflumizole.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water, EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to triflumizole they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the estimated environmental concentrations (EECs) of triflumizole for acute exposures are estimated to be 191 parts per billion (ppb) for surface water and 0.12 ppb for ground water. The EECs for chronic exposures are estimated to be 40 ppb for surface water and 0.12 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Triflumizole is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to triflumizole and any other substances and triflumizole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that triflumizole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

C. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. There is qualitative evidence of increased susceptibility demonstrated in the oral prenatal developmental toxicity studies in rats. Developmental toxicity resulted in fetal death as compared to maternal toxicity which included decreases in body weight gain and food consumption and increases in placental, spleen and liver weights at the same dosages. No quantitative or qualitative evidence of increased susceptibility was demonstrated in the prenatal developmental toxicity studies in rabbits or the multi-generation reproduction studies in rats. In the rabbit developmental studies, 24–hour fetal survival was decreased at the highest dose tested. This endpoint is not a recommended guideline parameter and is generally believed to have limited value in the assessment of development toxicity; rather, it is more an indicator of fetal endurance in the absence of critical maternal care, following removal from the uterus. The Hazard Identification Assessment Review Committee did not consider this effect to be a measurement of treatment-related effects on fetal viability and, thus, did not consider it to be relevant to the assessment of fetal susceptibility. There was no evidence of quantitative or qualitative susceptibility in the 2–generation reproduction study in rats. In that study, increased gestation length was observed at the study LOAEL. In rats, this alteration in normal reproductive function can result in equally adverse consequences (i.e., mortality) in both dams and offspring.

3. *Conclusion*. In the Agency's previous triflumizole human health risk assessment, the following toxicity studies were determined to be data gaps: A 28–day rat inhalation study Guideline Number (GLN) 870.3465)), acute rat neurotoxicity study (GLN 870.6200), and subchronic rat neurotoxicity study

(GLN 870.6200). The acute and sub-chronic neurotoxicity studies have been submitted, reviewed by the Agency and determined to be acceptable. As a result, the following has changed: (1) Selection of an acute endpoint for the general U.S. population (including infants and children); and (2) the removal of the 3x database uncertainty factor (UFDB). All other aspects of the most recent risk assessment remain unchanged.

As acceptable acute and sub-chronic neurotoxicity studies have been submitted, the Agency has determined that the 3x UFDB should be removed from the acute and chronic RfDs. In addition, the FQPA SFC recommended a special FQPA SF be reduced to 1x. The Agency has re-evaluated the quality of the exposure and hazard data; and, based on these data, concluded that the special FQPA SF remain at 1x. The conclusion is based on the following:

- The toxicity database is complete for FQPA assessment.
- There was no quantitative or qualitative evidence of increased susceptibility in the rabbit fetuses following *in utero* exposure or the rat following prenatal and postnatal exposure in the rat reproduction study.
- There was evidence of qualitative susceptibility in the developmental rat study; however, there are no residual uncertainties, and the use of the developmental NOAEL and the endpoint for the acute RfD for females 13 to 50 would be protective of the prenatal toxicity following an acute dietary exposure.
- There is no evidence of increased quantitative or qualitative susceptibility in the rat developmental neurotoxicity study.
- The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100% CT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.
- The chronic dietary food exposure assessment utilizes ARs and % CT data verified for several existing uses. For all proposed use, tolerance-level residue and 100% CT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.
- The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health-protective, high-end estimates of water concentrations which will not likely be exceeded.
- There are no registered or proposed uses of triflumizole that would result in residential exposure.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the Populated adjusted dose (PAD)) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA, Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to triflumizole in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of triflumizole on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to triflumizole will occupy 6% of the aPAD for the U.S. population, 9% of the aPAD for females 13 to 49 years old, and 21% of the aPAD for children 1 to 2 years old, the population at greatest exposure. In addition, despite the potential for acute dietary exposure to triflumizole in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of triflumizole in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population (total)	0.25	5	191	0.12	8,300
Females, (13–49 years)	0.1	9	191	0.12	2,700
All Infants (<1 year old)	0.25	11	191	0.12	2,200
Children (1–2 years old)	0.25	21	191	0.12	2,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to triflumizole from food will utilize 5% of the cPAD for the U.S. population, 4% of the cPAD for all infants (<1 year old) and 13% of the cPAD for children 1 to 2 years old, the subpopulation at greatest exposure.

There are no residential uses for triflumizole that result in chronic residential exposure to triflumizole. In addition, despite the potential for chronic dietary exposure to triflumizole in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of triflumizole in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO TRIFLUMIZOLE

Population Subgroup	cPAD mg/ kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.015	5	40	0.12	500
Children (1–2 years old)	0.015	13	40	0.12	130
Infants (<1 year old)	0.015	4	40	0.12	140

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure assessments take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). For triflumizole, the Agency did not perform short-term or intermediate-term assessments because there are currently no registered or proposed uses for homeowner application and residential post-application exposures are expected to be negligible.

4. *Aggregate cancer risk for U.S. population*. Since triflumizole has been determined not to be carcinogenic, it is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to triflumizole residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/mass spectrometry detector (GC/MSD) method (Morse Method METH-115, Revision #3)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for triflumizole residues in/on crop commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances discussed in this risk assessment.

C. Conditions

The petitioner should submit adequate limited field rotational crop data on wheat at plant-back intervals longer than 120 days. Alternatively, the petitioner has the option of submitting a full set of residue field trials on all intended rotational crops other than leafy and root vegetables.

VI. Conclusion

Therefore, tolerances are established for combined residues of triflumizole and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on parsley, leaves at 9.0 ppm; dandelion, leaves at 7.0 ppm; swiss chard at 7.0 ppm; collards at 9.0 ppm; kale at 9.0 ppm; kohlrabi at 9.0 ppm; mustard greens at 9.0 ppm; cabbage, chinese, napa at 9.0 ppm; broccoli at 1.0 ppm; and coriander, leaves at 9.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides that the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0054 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 7, 2005.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number OPP–2005–0054, to: Public Information and Records Integrity Branch, Information Resources and

Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.476 is amended by adding text to paragraph (b) to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time limited tolerances are established for the residues triflumizole (1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-

propoxyethyl)-1H-imidazole) and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table, and will expire and are revoked on the dates specified.

Commodity	Parts per million	Expiration/ revocation date
Broccoli	1.0	6/30/08
Cabbage, chinese, napa	9.0	6/30/08
Collards	9.0	6/30/08
Coriander, leaves	9.0	6/30/08
Dandelion, leaves	7.0	6/30/08
Kale	9.0	6/30/08
Kohlrabi	9.0	6/30/08
Mustard greens	9.0	6/30/08
Parsley, leaves	9.0	6/30/08
Swiss chard	7.0	6/30/08

* * * * *

[FR Doc. 05–7046 Filed 4–7–05; 8:45 am]
BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH44

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population for Two Fishes (Boulder Darter and Spotfin Chub) in Shoal Creek, Tennessee and Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the States of Tennessee and Alabama and with Conservation Fisheries, Inc., a nonprofit organization, plan to reintroduce one federally listed endangered fish, the boulder darter (*Etheostoma wapiti*), and one federally listed threatened fish, the spotfin chub (*Cyprinella* (=*Hybopsis*) *monacha*), into their historical habitat in Shoal Creek (a tributary to the Tennessee River), Lauderdale County, Alabama, and Lawrence County, Tennessee. Based on the evaluation of species' experts, these species currently do not exist in this reach or its tributaries. These two fish are being reintroduced under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and would be classified as a nonessential experimental population (NEP).

The geographic boundaries of the NEP would extend from the mouth of Long Branch, Lawrence County, Tennessee (Shoal Creek mile (CM) 41.7 (66.7 kilometers (km)), downstream to the backwaters of the Wilson Reservoir at Goose Shoals, Lauderdale County, Alabama (approximately CM 14 (22 km)), and would include the lower 5 CM (8 km) of all tributaries that enter this reach.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical ranges. This rule provides a plan for establishing the NEP and provides for limited allowable legal taking of the boulder darter and spotfin chub within the defined NEP area. In addition, we are changing the scientific name for spotfin chub, from *Cyprinella* (=*Hybopsis*) *monacha* to *Erimonax monachus*, to reflect a recent change in the scientific literature, and adding a map to the regulation for a previously created NEP including one of these fishes for the purposes of clarity.

DATES: The effective date of this rule is April 8, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

You may obtain copies of the final rule from the field office address above, by calling (931) 528–6481, or from our Web site at *http://cookeville.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, Ext. 211, facsimile 931/528–7075, or e-mail at *timothy_merritt@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Under section 10(j) of the Act, the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' Based on the best scientific and commercial data available, we must determine whether experimental populations are ''essential,'' or ''nonessential,'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Without the ''nonessential experimental population'' designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of an endangered species. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

With the experimental population designation, a population designated is treated for purposes of section 9 of the Act as threatened regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the

consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individuals that are used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In the case of the boulder darter and spotfin chub, the donor population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, it is possible that wild adult stock could also be released into the NEP area.

2. *Biological information:* The endangered boulder darter is an olive- to gray-colored fish that lacks the red spots common to most darters. It is a small fish, approximately 76 millimeters (mm) (3 inches (in)) in length. Although boulder darters were historically recorded only in the Elk River system and Shoal Creek (a tributary to the Tennessee River), scientists believe, based on the historical availability of suitable habitat, that this darter once inhabited fast-water rocky habitat in the Tennessee River and its larger tributaries in Tennessee and Alabama, from the Paint Rock River in Madison County, Alabama, downstream to at least Shoal Creek in Lauderdale County, Alabama (U.S. Fish and Wildlife Service 1989). Currently, it is extirpated from Shoal Creek (a tributary to the Tennessee River) and exists only in the Elk River, Giles and Lincoln Counties, Tennessee, and Limestone County, Alabama, and the lower reaches of Richland Creek, an Elk River tributary, Giles County, Tennessee (U.S. Fish and Wildlife Service 1989).

The spotfin chub is also olive colored, but with sides that are largely silvery and with white lower parts. Large nuptial males have brilliant turquoise-royal blue coloring on the back, side of the head, and along the mid-lateral part of the body. It is also a small fish, approximately 92 millimeters (mm) (4 inches (in)) in length. The spotfin chub was once a widespread species and was historically known from 24 upper and middle Tennessee River system streams, including Shoal Creek. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; the Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River system (Obed River, Clear Creek, and Daddys Creek), Cumberland and Morgan Counties, Tennessee; the Holston River and its tributary, North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (U.S. Fish and Wildlife Service 1983; P. Shute, TVA, pers. comm. 1998).

Since the mid-1980s, Conservation Fisheries, Inc. (CFI), a nonprofit organization, with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service, National Park Service, Tennessee Valley Authority (TVA), and Tennessee Aquarium, has successfully translocated, propagated, and reintroduced the spotfin chub and three other federally listed fishes (smoky madtoms, yellowfin madtoms, and duskytail darters) into Abrams Creek, Great Smoky Mountains National Park, Blount County, Tennessee. These fish historically occupied Abrams Creek prior to an ichthyocide treatment in the 1950s. An NEP designation for Abrams Creek was not needed since the entire watershed occurs on National Park Service land, section 7 of the Act applies regardless of the NEP designation, and existing human activities and public use of the Creek are consistent with protection and take restrictions needed for the reintroduced populations. Natural reproduction by all four species in Abrams Creek has been documented, but the spotfin chub appears to be the least successful in this capacity (Rakes *et al.* 2001; Rakes and Shute 2002). We have also worked with CFI to translocate, propagate, and reintroduce these same four fish into an NEP established for a section of the Tellico River, Monroe County, Tennessee (67 FR 52420, August 12, 2002). Propagated fish of these four species were released into the Tellico River starting in 2003 and continuing in 2004. It is still too early to determine the success of these releases, but it is believed that the habitat and water quality is sufficient to ensure future success similar to the Abrams Creek reintroductions. CFI has also successfully propagated boulder darters and augmented the only known population of the species in the Elk River system in Tennessee.

Based on CFI's success and intimate knowledge of these two fishes and their habitat needs, we contracted with CFI to survey Shoal Creek in order to determine if suitable habitat exists in this creek for reintroductions, and if we could expand our ongoing fish recovery efforts to these waters (Rakes and Shute 1999). Rakes and Shute (1999) concluded that about 20 miles (32 km) of Shoal Creek above the backwaters of the Wilson Reservoir appeared to contain suitable reintroduction habitat for both fishes. The boulder darter and spotfin chub were last collected from Shoal Creek in the 1880s, and since then both were apparently extirpated from this reach. We believe the boulder darter was extirpated by the combined effects of water pollution and the impoundment of lower Shoal Creek with the construction of Wilson Dam (U.S. Fish and Wildlife Service 1989). We believe that similar factors led to the extirpation of the spotfin chub. However, as a result of implementation of the Clean Water Act by the U.S. Environmental Protection Agency (EPA) and State water and natural resources agencies, and the pollution control measures undertaken by municipalities, industries, and individuals, the creek's water quality has greatly improved and its resident fish fauna have responded positively (Charles Saylor, TVA, pers. comm. 2002; based on his bioassays).

3. *Recovery Goals/Objectives:* The boulder darter (*Etheostoma wapiti*) (Etnier and Williams 1989) was listed as an endangered species on September 1, 1988 (53 FR 33996). We completed a recovery plan for this species in July 1989 (U.S. Fish and Wildlife Service 1989). The downlisting (reclassification from endangered to threatened) objectives in the recovery plan are: (1) To protect and enhance the existing population in the Elk River and its tributaries, and to successfully establish a reintroduced population in Shoal Creek or other historical habitat or discover an additional population so that at least two viable populations exist; and (2) to complete studies of the species' biological and ecological requirements and implement management strategies developed from

these studies that have been or are likely to be successful. The delisting objectives are: (1) To protect and enhance the existing population in the Elk River and its tributaries, and to successfully establish reintroduced populations or discover additional populations so that at least three viable populations exist (the Elk River population including the tributaries must be secure from river mile (RM) 90 downstream to RM 30); (2) to complete studies of the species' biological and ecological requirements and implement successful management strategies; and (3) to ensure that no foreseeable threats exist that would likely impact the survival of any populations.

The spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*) (Cope 1868) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for this species in November 1983 (U.S. Fish and Wildlife Service 1983). We also established an NEP for the spotfin chub and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). The delisting objectives in the recovery plan are: (1) To protect and enhance existing populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River; (2) to ensure, through reintroduction and/or the discovery of two new populations, that viable populations exist in two other rivers; and (3) to ensure that no present or foreseeable threats exist that would likely impact the survival of any populations.

The recovery criteria for both fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish multiple, viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (*i.e.*, species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of both the boulder darter and spotfin chub.

4. *Reintroduction site:* In May 1999 letters to us, the Commissioner of the Alabama Department of Conservation and Natural Resources (ADCNR) and the Executive Director of the TWRA requested that we consider designating NEPs for the spotfin chub and boulder darter and reintroducing both species into Shoal Creek, where they historically occurred.

We previously established NEPs for the spotfin chub and three other federally listed fishes in the Tellico River, Tennessee, on August 12, 2002 (67 FR 52420). Reintroductions of the spotfin chub were initiated in the Tellico River in 2002 and were continued in 2003 and 2004 along with the first reintroductions of the remaining three fish species. These reintroduced fish are being monitored. We believe the Tellico River is suitable for the establishment of viable populations of each of these four fish and anticipate success as this recovery project proceeds. Establishment of viable populations of the spotfin chub in both the Tellico River under the existing regulation and in Shoal Creek under this regulation will help achieve an objective in the recovery of this fish. However, it will take several years of monitoring to fully evaluate if populations of this fish (and the other fishes) have become established and remain viable in these historic river reaches.

Based on the presence of suitable habitat, the positive response of native fish species to habitat improvements in Shoal Creek, the presence of similar fish species that have similar habitat requirements to both of these fishes, the recommendations mentioned above, and the evaluation of biologists familiar with Shoal Creek, we believe that Shoal Creek, from the mouth of Long Branch to the backwaters of the Wilson Reservoir, is suitable for the reintroduction of the boulder darter and spotfin chub as NEPs.

According to P. Rakes (CFI, pers. comm. 2005), the best sites to reintroduce these fishes into Shoal Creek are between CM 33 (53 km) and CM 14 (22 km). Therefore, we plan to reintroduce the boulder darter and spotfin chub into historical habitat of the free-flowing reach of Shoal Creek between CM 33 and CM 14. This reach contains the most suitable habitat for the reintroductions. Neither species currently exists in Shoal Creek or its tributaries.

5. *Reintroduction procedures:* The dates for these reintroductions, the specific release sites, and the actual number of individuals to be released cannot be determined at this time. Individual fish that would be used for the reintroductions primarily will be artificially propagated juveniles. However, it is possible that wild adult stock could also be released into the NEP area. Spotfin chub and boulder darter propagation and juvenile rearing technology are available. The parental stock of the juvenile fishes for reintroduction will come from existing wild populations. In some cases, the parental stock for juvenile fish will be returned back to the same wild population. Generally, the parents are permanently held in captivity.

The permanent removal of adults from the wild for their use in reintroduction efforts may occur when one or more of the following conditions exist: (1) Sufficient adult fish are available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) when the population is not reproducing. It is most likely that adults will be permanently removed because of the first condition: sufficient adult fish are available within a donor population to sustain the loss without jeopardizing the species. An enhancement of propagation or survival permit under section 10(a)(1)(A) of the Act is required. The permit will be issued before any take occurs, and we will coordinate these actions with the appropriate State natural resources agencies.

6. *Status of reintroduced population:* Previous translocations, propagations, and reintroductions of spotfin chubs and boulder darters have not affected the wild populations of either species. The use of artificially propagated juveniles will reduce the potential effects on wild populations. The status of the extant populations of the boulder darter and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. If any of the reintroduced populations become established and are subsequently lost, the likelihood of the species' survival in the wild would not be appreciably reduced. Therefore, we have determined that these reintroduced fish populations in Shoal Creek are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

Reintroductions are necessary to further the recovery of these species. The NEP designation for the reintroduction alleviates landowner concerns about possible land and water use restrictions by providing a flexible management framework for protecting and recovering the boulder darter and spotfin chub, while ensuring that the daily activities of landowners are unaffected. In addition, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historical habitat. These species are not known to exist in Shoal Creek or its tributaries at the present time.

7. *Location of reintroduced population:* The NEP area, which encompasses all the sites for the reintroductions, will be located in the free-flowing reach of Shoal Creek (a tributary to the Tennessee River), Lauderdale County, Alabama, and Lawrence County, Tennessee, from the mouth of Long Branch downstream to the backwaters of the Wilson Reservoir. Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. This NEP area is totally isolated from existing populations of these species by large reservoirs, and neither fish species is known to occur in or move through large reservoirs. Therefore, the reservoirs will act as barriers to the species' downstream movement into the Tennessee River and its tributaries and ensure that this NEP remains geographically isolated and easily distinguishable from existing wild populations. Based on the fishes' habitat requirements, we do not expect them to become established outside the NEP. However, if any of the reintroduced boulder darters and spotfin chubs move outside the designated NEP area, then the fish would be considered to have come from the NEP area. In that case, we may propose to amend the rule and enlarge the boundaries of the NEP area to include the entire range of the expanded populations.

The designated NEP area for the spotfin chub in the Tellico River (67 FR 52420) does not overlap or interfere with this NEP area for Shoal Creek in Tennessee and Alabama because they are geographically separated river reaches.

Critical habitat has been designated for the spotfin chub (42 FR 47840, September 22, 1977); however, the designation does not include this NEP area. Critical habitat has not been designated for the boulder darter. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we have already established, by regulation, a nonessential experimental population.

8. *Management:* The aquatic resources in the reintroduction area are managed by the ADCNR and TWRA. Multiple-use management of these waters will not change as a result of the experimental designation. Private landowners within the NEP area will still be allowed to continue all legal agricultural and recreational activities. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of boulder darter and spotfin chub will conflict with existing human activities or hinder public use of the area. The ADCNR and the TWRA have previously endorsed the boulder darter and spotfin chub reintroductions under NEP designations and are supportive of this effort. The NEP designation will not require the ADCNR and the TWRA to specifically manage for reintroduced boulder darter and spotfin chub.

The Service, State employees, and CFI, Inc., staff will manage the reintroduction. They will closely coordinate on reintroductions, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reintroductions of species.

(a) *Mortality:* The Act defines ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as recreation (*e.g.*, fishing, boating, wading, trapping or swimming), forestry, agriculture, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a boulder darter or spotfin chub within the experimental population area provided that the take is unintentional and was not due to negligent conduct. Such conduct will not constitute ''knowing take,'' and we will not pursue legal action. However, when we have evidence of knowing (*i.e.*, intentional) take of a boulder darter or spotfin chub, we will refer matters to the appropriate authorities for prosecution. We expect levels of incidental take to be low since the reintroduction is compatible with existing human use activities and practices for the area.

(b) *Special Handling:* Service employees and authorized agents acting on their behalf may handle boulder darter and spotfin chub for scientific purposes; to relocate boulder darter and spotfin chub to avoid conflict with human activities; for recovery purposes; to relocate boulder darter and spotfin chub to other reintroduction sites; to aid sick or injured boulder darter and spotfin chub; and to salvage dead boulder darter and spotfin chub.

(c) *Coordination with landowners and land managers:* The Service and cooperators identified issues and concerns associated with the boulder darter and spotfin chub reintroduction before preparing this rule. The reintroduction also has been discussed with potentially affected State agencies, businesses, and landowners within the release area. The land along the NEP site is privately owned. International Paper owns a large tract within the NEP area and has expressed a strong interest in working with us to establish these fish in their stretch of the creek. Most, if not all, of the identified businesses are small businesses engaged in activities along the affected reaches of this creek. Affected State agencies, businesses, landowners, and land managers have indicated support for the reintroduction, if boulder darter and spotfin chub released in the experimental population area are established as an NEP and if aquatic resource activities in the experimental population area are not constrained.

(d) *Potential for conflict with human activities:* We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public use of the NEP area within Shoal Creek. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the reintroduction area.

(e) *Monitoring:* After the first initial stocking of these two fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(f) *Public awareness and cooperation:* On August 26, 1999, we mailed letters to 80 potentially affected congressional offices, Federal and State agencies, local

governments, and interested parties to notify them that we were considering proposing NEP status in Shoal Creek for two fish species. We received a total of four responses to the 1999 notification, all of which supported our proposed designation and reintroductions.

The EPA supported the proposal, commended the ADCNR, TWRA, and us for the proposal and its projected beneficial results, and stated that the reintroductions would assist them in meeting one of the goals of the Clean Water Act—restoring the biological integrity of the Nation's water.

The TVA strongly supported the concept of reintroducing extirpated species, but also cautioned that past industrial discharges into Shoal Creek could potentially limit or prevent the survival of sensitive fishes in the creek.

The Tennessee Department of Environment and Conservation applauded our (TWRA, CFI, and us) efforts to restore Shoal Creek fishes. They also supported the proposed reintroductions under NEP status, because the designation will ensure that current human uses of Shoal Creek are given due consideration in recovery efforts for the species.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, supported the reintroductions and concluded that he saw no compelling reason to delay them.

We have informed the general public of the importance of this reintroduction project in the overall recovery of the boulder darter and spotfin chub. The designation of the NEP for Shoal Creek and adjacent areas would provide greater flexibility in the management of the reintroduced boulder darter and spotfin chub. The NEP designation is necessary to secure needed cooperation of the States, landowners, agencies, and other interests in the affected area.

Finding

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing the boulder darter and spotfin chub into the Shoal Creek Experimental Population Area under a Nonessential Experimental Population designation will further the conservation of the species.

Other Changes to the Regulations

In addition, we are making two minor technical corrections to the existing regulations regarding these species:

(1) The spotfin chub was listed with critical habitat and a special rule on September 9, 1977, under the scientific name of *Hybopsis monacha*. The current list of endangered and threatened species at 50 CFR 17.11(h), the existing experimental population on the Tellico River in Tennessee at 50 CFR 17.84(m), and the critical habitat designation at 50 CFR 17.95(e) all use the scientific name *Cyprinella* (=*Hybopsis*) *monacha* for the spotfin chub. However, the special rule at 50 CFR 17.44(c) uses the scientific name *Hybopsis monacha* for the spotfin chub. In the proposed rule (69 FR 61774, October 21, 2004), we proposed correcting the text for the special rule at 50 CFR 17.44(c) by changing the scientific name for the spotfin chub from *Hybopsis monacha* to *Cyprinella* (=*Hybopsis*) *monacha* to make this section consistent with the text of the existing regulations for the spotfin chub. During the comment period, it was brought to our attention that the scientific name for the spotfin chub has recently been changed to *Erimonax monachus* (Nelson *et al.* 2004). This name change has occurred in a peer-reviewed journal and has acceptance in the scientific community. Therefore we are correcting the text for the current list of endangered and threatened species at 50 CFR 17.11(h), the existing experimental population on the Tellico River in Tennessee at 50 CFR 17.84(m), the critical habitat designation at 50 CFR 17.95(e), and the special rule at 50 CFR 17.44(c) by changing the scientific name for the spotfin chub from *Cyprinella* (=*Hybopsis*) *monacha* to *Erimonax monachus* (see Regulation Promulgation section below).

(2) Unlike many of the existing experimental population regulations at 50 CFR 17.84, the entries for the experimental populations for the Tellico River in Tennessee at 50 CFR 17.84(e) and (m) do not include a map. We are adding a map for these entries in order to provide clarity for the public and make this section consistent with the text of the existing regulations for other experimental populations.

Summary of Comments and Recommendations

In the October 21, 2004, proposed rule (69 FR 61774), we requested that all interested parties submit comments or information concerning the proposed NEP. We contacted appropriate Federal, State, and local agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment on the proposed NEP. We also provided notification of this document through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We provided the document on the Service's Tennessee Field Office Internet site following its release.

During the public comment period, we received comments from four parties: One State agency, two universities, and one nonprofit organization. Of the four parties responding, three supported the proposed NEP and one was neutral. The Alabama Department of Conservation and Natural Resources submitted comments as peer reviewers. The State agency's comments are reflected in Peer Review Comment 1 and 2 below.

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with these species within the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. We received comments from two of the four peer reviewers. These are included in the summary below and incorporated into this final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have either been addressed below or incorporated directly into this final rule. The comments are grouped below as either peer review or public comments.

Peer Review Comments

(1) *Comment:* The proposed reintroduction is for Shoal Creek in Lauderdale County, Alabama; however, there is another Shoal Creek in Limestone County, Alabama, that is a tributary to the Elk River. Limestone County is adjacent to Lauderdale County and a recent survey by the Geological Survey of Alabama collected two boulder darters in this Shoal Creek, which was a new tributary record for this species. Because there are two creeks named ''Shoal'' in adjacent counties, it might help to differentiate between the two creeks to lessen any potential confusion.

Response: We have clarified the description of the Shoal Creek in Lauderdale County, Alabama, that occurs within the NEP by stating that this Shoal Creek is a tributary to the Tennessee River. The Shoal Creek in Limestone County, Alabama, is a tributary to the Elk River. This, along with the county it occurs in, should adequately differentiate between the two creeks.

(2) *Comment:* Section 5 of the proposed rule states that artificially propagated juveniles will most likely be reintroduced, but wild adult stock could also be used. The literature states that adult and juvenile spotfin chubs require slightly different habitats, thus reintroduction with juveniles should be done to account for those differences.

Response: It is our intent to release primarily juvenile spotfin chubs that have been raised by CFI. We have worked closely with CFI to determine the appropriate habitats for releasing these juvenile fish. If we do release any wild adult stock, we will work with CFI and the State Wildlife Agencies to ensure that the appropriate habitat is identified for their release.

(3) *Comment:* The newest names list for fish has been released and the scientific name of the spotfin chub has been changed to *Erimonax monachus*.

Response: We have reviewed the reference provided and concur that the scientific name of the spotfin chub has changed from *Cyprinella* (=*Hybopsis*) *monacha* to *Erimonax monachus*. We have made the appropriate changes in the section titled ''Other Changes to the Regulations'' (see above).

(4) *Comment:* The Etnier and Williams 1989 description of the boulder darter was cited, but does not appear in the Literature Cited section.

Response: This citation has been added to the Literature Cited section.

(5) *Comment:* Boulder darters may be able to use reservoirs for dispersal purposes, and success of this introduction might make it easier for them to reach the mouth of the Flint River or perhaps some other fairly large Tennessee River tributaries in Alabama.

Response: We believe that the reservoirs will act as barriers to the species' downstream movement into the Tennessee River and its tributaries and will ensure that this NEP remains geographically isolated and easily distinguishable from existing known wild populations in the Elk River watershed. However, we also state that if any of the reintroduced boulder darters or spotfin chubs move outside the designated NEP area, then the fish would be considered to have come from the NEP area. In that case, we may propose to amend the rule and enlarge the boundaries of the NEP area to include the entire range of the expanded populations.

Public Comments

(6) *Comment:* Environmental Defense fully supports the proposal to establish new experimental populations of the boulder darter and the spotfin chub.

Response: We appreciate Environmental Defense's support of this important recovery effort to restore these fish back into this portion of their historical range.

(7) *Comment:* No source population for brood stock or wild adult stock is identified in the proposed rule for the spotfin chub.

Response: The Service has not identified the source population for the spotfin chub because no decision has been made at this time on which source population should be used. A final decision will be made in concert with our State partners once we have reviewed the best available scientific information.

(8) *Comment:* No protocol is outlined to determine if progeny from brood stock reflects the genetic diversity present in the source population.

Response: CFI states that it takes as many adults from the source population as the Federal and State agencies believe is appropriate to remove without harming the source population and within limits of practicality. CFI also states that it ensures that as many adults as possible are involved in reproduction. This sometimes involves cycling different males in and out of production. CFI emphasizes the importance of these reintroductions being long-term projects where new parental stock is brought into production every year or two from the original source population. We believe that this method maximizes our potential to have offspring that have similar genetic diversity to the source population and increases the recovery chances for these species within the limited amount of funding that Federal and State agencies have available to them.

Effective Date

We are making this rule effective upon publication. In accordance with the Administrative Procedure Act, we find good cause as required by 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in the **Federal Register**. We currently have two year classes of propagated boulder darters available for release. The juvenile class of boulder darters will be ready to spawn this spring for the first time. In order for this group of boulder darters to have the maximum amount of time to accomplish their first spawn, these fish need to be placed into Shoal Creek in April. The earlier in April these fish can be released, the more likely they are to spawn this spring. The older class of boulder darters are at the end of their spawning lives and must be placed into Shoal Creek by early May in order to ensure that they will have a chance to successfully spawn one last time in the wild. The 30-day delay would be contrary to the public interest because it would result in a loss of spawning for the first-time juvenile class and the last-time older class, and this would result in natural spawning not occurring in Shoal Creek until the spring of 2006.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule to designate NEP status for the boulder darter and spotfin chub in Shoal Creek, Lauderdale County, Alabama and Lawrence County, Tennessee, is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million or more on the economy and will not have an adverse effect on any economic sector, productivity, competition, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment of lower Shoal Creek (about 28 CM (44 km)) in southwestern Tennessee and northern Alabama. Therefore, a cost-benefit and economic analysis will not be required.

We do not expect this rule to have significant impacts to existing human activities (*e.g.*, agricultural activities, forestry, fishing, boating, wading, swimming, trapping) in the watershed. The reintroduction of these federally listed species, which will be accomplished under NEP status with its associated regulatory relief, is not expected to impact Federal agency actions. Because of the substantial regulatory relief, we do not believe the proposed reintroduction of these species will conflict with existing or proposed human activities or hinder public use of Shoal Creek or its tributaries.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily the EPA and TVA. Both Federal agencies support the reintroductions. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of the boulder darter and spotfin chub in the areas described will not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, or loan

programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of Shoal Creek as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most of the identified entities are small businesses engaged in activities along the affected reaches of this creek, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these species, will not create inconsistencies with other agencies' actions, and will not conflict with existing or proposed human activity, or Federal, State, or public use of the land or aquatic resources.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more. It will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of the species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipality. The ADCNR and TWRA, which manage Shoal Creek's aquatic resources, requested that we consider these reintroductions under an NEP designation. However, they will not be required to manage for any reintroduced species. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required since this rulemaking does not require any action to be taken by local or State governments or private entities. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et. seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (*i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced fishes when such take is incidental to an otherwise legal activity, such as recreation (*e.g.*, fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Shoal Creek system.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of two listed fish species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have significant Federalism effects to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The State wildlife agencies in Alabama (ADCNR) and Tennessee (TWRA) requested that we undertake this rulemaking in order to assist the States in restoring and recovering their native aquatic fauna. Achieving the recovery goals for these species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of State agencies (ADCNR and TWRA). We have cooperated with the ADCNR and TWRA in the preparation of this rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. This rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

We have determined that the issuance of this rule is categorically excluded under our National Environmental Policy Act procedures (516 DM 6, Appendix 1.4 B (6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations

with Native American Tribal Governments'' (59 FR 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Literature Cited

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U.S. Fish and Wildlife Service. 1983. Spotfin Chub Recovery Plan. Atlanta, GA. 46 pp.____ 1989. Boulder Darter Recovery Plan. Atlanta, GA. 15 pp.

Author

The principal author of this rule is Timothy Merritt (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the existing entries in the List of Endangered and Threatened Wildlife under FISHES for ''Chub, spotfin,'' and ''Darter, boulder,'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Chub, spotfin (=turquoise shiner)	*Erimonax monachus*.	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28, 732	17.95(e)	17.44(c)
Do	....do	....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30 km)) upstream to Tellico River mile 33 (53 km), in Monroe County, TN.	XN	732	NA	17.84(m)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.	XN	747	NA	17.84(o)
*	*	*	*	*	*	*	
Darter, boulder	*Etheostoma wapiti*U.S.A. (AL, TN).	Entire, except where listed as an experimental population.		E	322	NA	NA
Do	....do	....do	Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.	XN	747	NA	17.84(o)
*	*	*	*	*	*	*	

§ 17.44 [Amended]

■ 3. Amend § 17.44(c) introductory text by removing the words ''spotfin chub (*Hybopsis monacha*)'' and adding, in their place, the words ''spotfin chub (*Erimonax monachus*)''.

■ 4. Amend § 17.84 by adding new paragraphs (e)(6), revising the introductory text to paragraph (m), and adding new paragraphs (m)(5) and (o) including maps to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(e) * * *

(6) **Note:** Map of the NEP area for the yellowfin madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

* * * * *

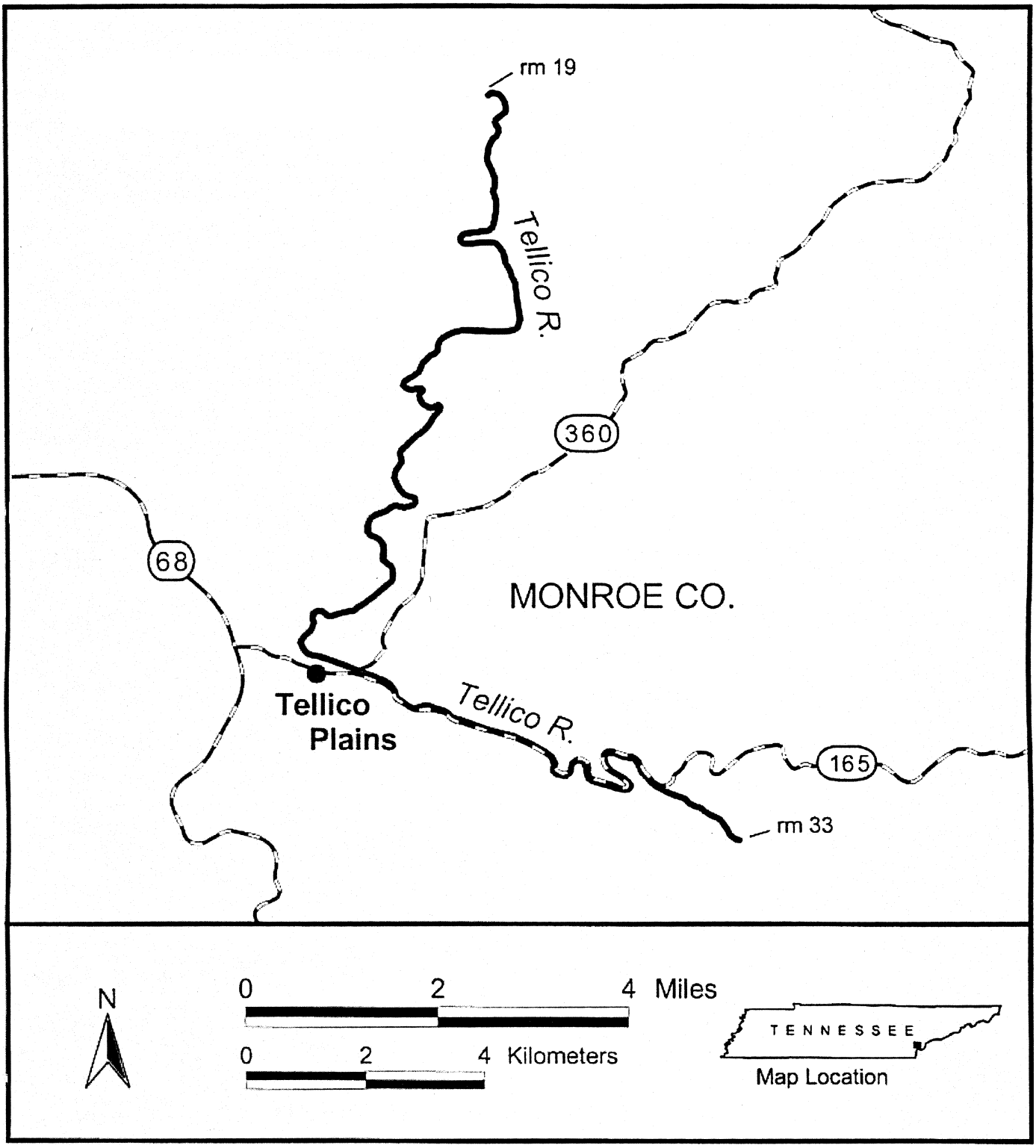
(m) Sptofin chub (=turquoise shiner) (*Erimonax monachus*), duskytail darter (*Etheostoma percnurum*), smoky madtom (*Noturus baileyi*).

* * * * *

(5) **Note:** Map of the NEP area for spotfin chub, duskytail darter, smoky madtom, and and yellowfin madtom (see paragraph (e) of this section) in Tennessee follows:

BILLING CODE 4310–55–P

Portion of the Tellico River Covered by the Spotfin Chub, Duskytail Darter, Smoky Madtom and Yellowfin Madtom Nonessential Experimental Population Designation



(o) Spotfin chub (=turquoise shiner) (*Erimonax monachus*), boulder darter (*Etheostoma wapiti*).

(1) *Where are populations of these fishes designated as nonessential experimental populations (NEP)?*

(i) The NEP area for the boulder darter and the spotfin chub is within the species' historic ranges and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(ii) None of the fishes named in paragraph (o) of this section are currently known to exist in Shoal Creek or its tributaries. Based on the habitat requirements of these fishes, we do not expect them to become established outside the NEP area. However, if any individuals of either of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed in the NEP area?* Take of these species that is accidental and incidental to an otherwise legal activity, such as recreation (*e.g.*, fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(3) *What take of these species is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (o)(2) of this section, all the provisions of § 17.31(a) and (b) apply to the fishes identified in paragraph (o)(1) of this section.

(ii) Any manner of take not described under paragraph (o)(2) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

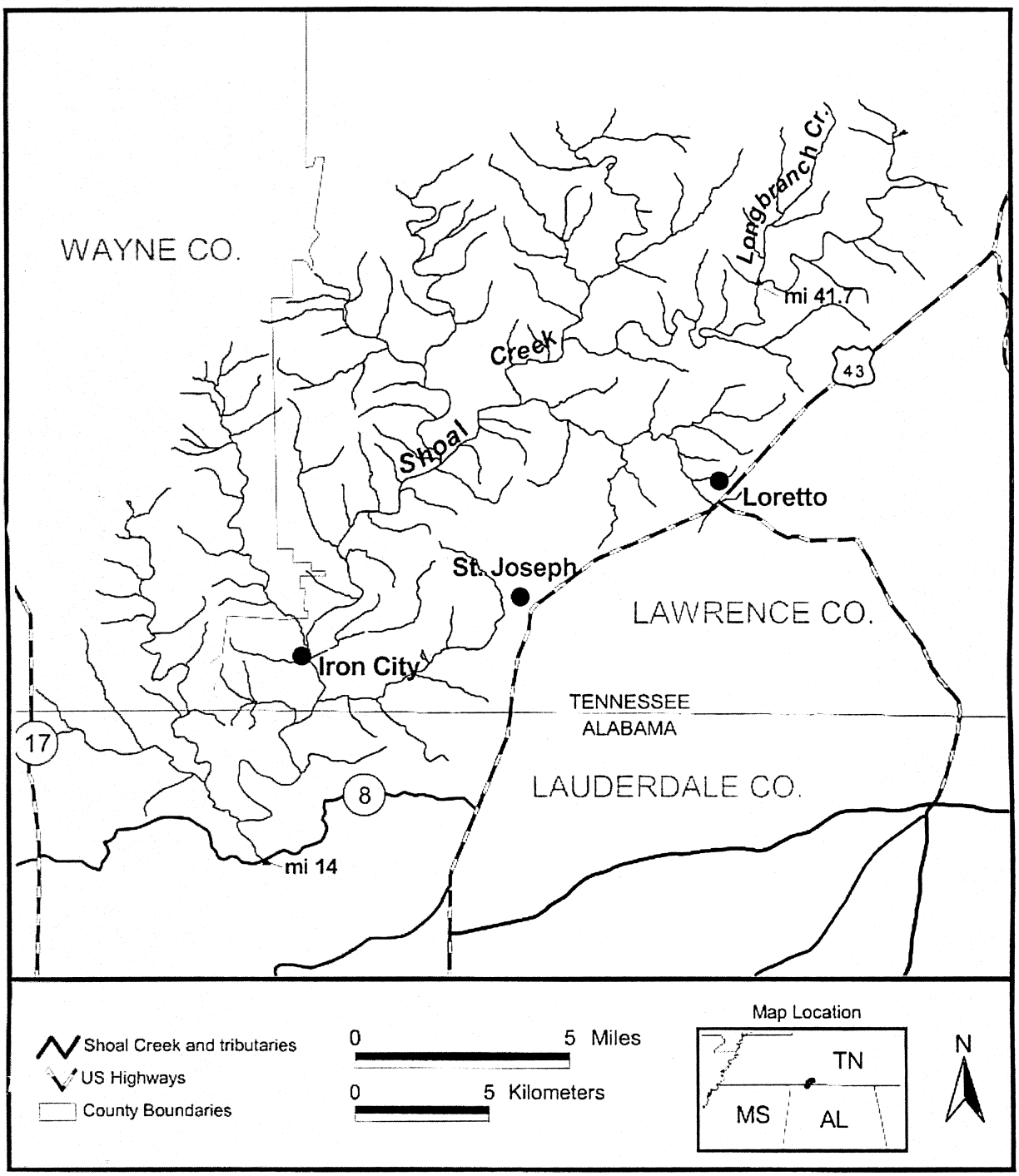
(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (o)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (o)(3) of this section.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of these two fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

Portion of Shoal Creek Watershed Covered by the Spotfin Chub and Boulder Darter Nonessential Experimental Population Designation



■ 5. Amend § 17.95(e) by removing the words ''SPOTFIN CHUB (*Cyprinella* (=*Hybopsis*) *monacha*)'' and adding, in their place, the words ''SPOTFIN CHUB (*Erimonax monachus*)''.

Dated: April 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–7086 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 70, No. 67
Friday, April 8, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 98

[Docket No. 02–046–1]

RIN 0579–AB79

Importation of Swine and Swine Products From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for importing animals and animal products into the United States to apply a uniform set of importation requirements related to classical swine fever (CSF) to a region consisting of all of the 15 Member States of the European Union (EU) that comprised the EU as of April 30, 2004 (the EU–15) and prohibit for a specified period of time the importation of live swine and swine products from any area in the EU–15 that is identified by the veterinary authorities of the region as a restricted zone. We believe these changes are necessary to help prevent the introduction of CSF into the United States while increasing our responsiveness to changes in the CSF situation in the EU.

DATES: We will consider all comments that we receive on or before June 7, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 02–046–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–046–1.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, and African swine fever.

Sections 94.9 and 94.10 of the regulations state that CSF is known to exist in all regions of the world, except for those regions listed in §§ 94.9(a) and 94.10(a). The importation of live swine and swine products from regions not recognized as free of CSF is restricted or prohibited. In addition, the importation of live swine and swine products from a region consisting of certain Member States and portions of Member States of the European Union (EU) is restricted with regard to CSF, even though that region is listed as free of the disease. The restrictions on imports from that region were established in a final rule published in the **Federal Register** on April 7, 2003 (68 FR 16922–16941, Docket No. 98–090–5).

We based our final rule primarily on two risk analyses conducted by APHIS.[1] [2] The risk analyses examined a region consisting of EU countries (Member States) that the European Commission (EC) asked us to recognize as free of CSF. (The EC is the EU institution responsible for representing the EU as a whole. It proposes legislation, policies, and programs of action and implements decisions of the EU Parliament and Council.) The Member States identified were Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, and Spain. Five other EU Member States—Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom—were already recognized by APHIS as being free of CSF.

The first risk analysis was made available to the public in 1999 at the time of publication in the **Federal Register** of the proposed rule (64 FR 34155–34168, Docket No. 98–090–1) upon which we based our April 2003 final rule. The second risk analysis was released in 2002 for public comment (67 FR 22388–22389, Docket No. 98–090–2) and represented a revision and supplementation of the 1999 risk analysis. Data used in both risk analyses represented events that occurred during a CSF epidemic in Europe during 1997 and 1998. That outbreak is considered to be the most severe CSF epidemic ever experienced in Europe. Both risk analyses are available by calling or writing to the person listed in this

[1] Biological Risk Analysis: Risk assessment and management options for imports of swine and swine products from the European Union—June 2, 1999.

[2] Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union—December 2000.

document under **FOR FURTHER INFORMATION CONTACT.** The analyses are also available on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* At the bottom of that Web site page, click on ''Information previously submitted by Regions requesting export approval and supporting documentation.'' At the next screen, click on the triangle beside ''European Union/Not Specified/Classical Swine Fever,'' then click on the triangle beside ''Response by APHIS,'' which will reveal links to the risk analyses.

The analyses took into account, among other things, the CSF history of the EU region consisting of the 10 Member States in the EC's request, the CSF history of countries adjacent to the region, the veterinary infrastructure and policies of the region, and the historical volumes of imports into the United States of breeding swine, swine semen, and pork and pork products from the region.

Based on the analyses, we considered it necessary to establish certain mitigation measures for the importation of live swine, pork and pork products, and swine semen from the region. Although there were no CSF outbreaks in EU domestic swine within the defined region at the time, the risk analyses assumed that, because CSF was endemic in wild boar in several parts of the EU, it was likely CSF would continue to occur in domestic swine in the region. Further, the risk analyses considered the open borders among EU Member States. To address these situations, the final rule required that commodities from the region of the EU that was considered to be unaffected with CSF be segregated from those from CSF-affected regions of the EU and other CSF-affected regions, and that measures be taken to ensure that donor boars providing semen for export to the United States are truly free of CSF. These requirements are described below under the heading ''Importation Conditions Established in April 2003.''

Importation Conditions Established in April 2003

Specifically, our April 2003 final rule required that the following conditions be met before the commodity in question could be imported into the United States (in the absence of any other diseases of swine that would otherwise prohibit importation):

- *For pork and pork products:* (1) The articles have not been commingled with pork or pork products derived from swine that have been in a region listed at the time as one in which CSF is known to exist; (2) the swine from which the pork or pork products were derived have not lived in a region listed at the time as one in which CSF is known to exist, and have not transited such a region unless moved directly through the region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination; and (3) the articles are accompanied by a certificate, issued by an official of the national government of the region of origin, stating that the above provisions have been met.
- *For breeding swine:* The swine (1) have never lived in a region listed at the time as one in which CSF is known to exist; (2) have never transited such a region unless moved directly through the region in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination; and (3) have never been commingled with swine that have been in a region listed at the time as one in which CSF is known to exist. Additionally, no equipment or materials used in transporting the swine may have previously been used for transporting swine ineligible for export to the United States unless the equipment or materials first were cleaned and disinfected. Lastly, the swine have to be accompanied by a certificate, issued by a salaried veterinary officer of the national government of the country of origin, stating that the above provisions have been met.
- *For swine semen:* The donor boar meets the same conditions as those listed above for breeding swine. Additionally, the following conditions must be met: (1) The semen comes from a semen collection center approved for export by the veterinary services of the national government of the country of origin; (2) the donor boar is held in isolation for at least 30 days prior to entering the semen collection center, and, no more than 30 days prior to being held in isolation, is tested with negative results using a CSF test approved by the Office International des Epizooties (OIE) [also referred to as the World Organisation of Animal Health]; and (3) the donor boar is observed by the semen collection center veterinarian while at the center (including at least a 40-day holding period at the center following collection of the semen) and, along with all other swine at the center, exhibits no clinical signs of CSF.

Under these conditions, we estimated that the risk of introducing CSF through imports from the defined region would be as follows:

- By importing breeding swine, most likely one incursion in an average of 33,670 years.
- By importing fresh pork, most likely one incursion in an average of 22,676 years.
- By importing swine semen, most likely one incursion in an average of 8,090 years.

APHIS considered each of these risks to be low.

We continue to consider the mitigation measures established in our April 2003 final rule to be necessary for the importation of breeding swine, pork and pork products, and swine semen from the EU region we recognized in that final rule, and to France and Spain, which were added to that region following publication of the April 2003 final rule in a final rule published on April 20, 2004 (69 FR 21042–21047, Docket No. 98–090–7). Under this proposed rule, those requirements would continue to apply.

Additionally, we are proposing to apply the measures established in our April 2003 final rule to importations from five additional EU Member States whose exports to the United States are free of CSF-related restrictions (Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom [consisting of England, Scotland, Wales, the Isle of Man, and Northern Ireland]), as well as to Luxembourg (which is currently listed as a region in which CSF exists, due to an outbreak of the disease following our June 1999 proposal) and all of Germany and Italy. Currently, only portions of Germany and Italy are recognized as free of CSF in our regulations. We would apply the same mitigation measures to each of the areas described above because we would recognize the combination of all of those areas of the EU as a single region of low-risk for CSF, discussed below. The region would be comprised of the 15 Member States comprising the EU as of April 30, 2004, which we refer to as the *European Union–15 (EU–15).* We would add a definition of *European Union–15 (EU–15)* to §§ 93.500, 94.0, and 98.30.

We discuss below, under the heading ''Uniform Conditions for Imports from the EU–15,'' our proposed application of uniform import conditions to the EU–15 with regard to CSF. We then discuss the reasons we believe the EU–15 qualifies as a region of low-risk for CSF under the heading ''Basis for Recognition of an EU Region.''

Uniform Conditions for Imports From the EU–15

As noted above, we are proposing to recognize a single region for CSF (the EU–15) that would consist of the following areas: (1) That region of the EU we now recognize as being free of

CSF but from which imports of swine and swine products are subject to specified restrictions; (2) Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom (consisting of England, Scotland, Wales, the Isle of Man, and Northern Ireland); and (3) Luxembourg and all of Germany and Italy. Currently, only portions of Germany and Italy are recognized as free of CSF in our regulations.

In our April 2003 final rule, we did not include Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom in the EU region we defined as free of classical swine fever but from which the importation of swine and swine products are subject to certain restrictions. Those five Member States had already been recognized in previous rulemakings as regions in which CSF is not known to exist and from which swine and swine products may be imported into the United States without restriction related to CSF. We continued to treat those Member States in the same way we had been treating them since the time we recognized them as free of CSF; that is, we did not apply to them the additional mitigation measures we were applying to the EU region we recognized in the April 2003 final rule.

However, because we had recognized those five Member States as free of CSF before the EU was established, the evaluations we had conducted that supported such a classification of freedom did not take into account the opening of national borders within the EU and the possibility that the five CSF-free Member States would trade freely with EU Member States that we considered CSF-affected.

As part of the EU, those five Member States carry out trade with the rest of the EU under what is essentially an open-border trading policy. There is no substantive difference between the way trade is carried out within the EU by those five Member States compared to the way it is carried out by other Member States. Because of these open-border policies, we believe the CSF risk from the five member States must be considered the same as from the EU region we recognized as subject to additional mitigation measures in our April 2003 final rule, and the same importation conditions would be applied to both areas under this proposed rule.

Additionally, we are proposing to apply those importation conditions to parts of the EU that we have not yet recognized as CSF-free. In our April 2003 final rule, we excluded certain parts of the EU—in some cases entire Member States—from the region we recognized as CSF-free, either because those areas were not eligible for recognition as CSF-free at the time we published the proposal for our April 2003 final rule, or because they experienced an outbreak of CSF in domestic swine following publication of that proposed rule. Those areas included all of France and Spain—which have since been added to the region of the EU we consider free of CSF with restrictions—all of Luxembourg, and parts of Germany and Italy. In Germany, we excluded the following kreis: the Kreis Uckermark in the Land of Brandenburg; the Kreis Oldenberg, the Kreis Soltau-Fallingbostel, and the Kreis Vechta in the Land of Lower Saxony; the Kreis Heinsberg and the Kreis Warendorf in the Land of Northrhine-Westphalia; the Kreis Bernkastel-Wittlich, the Kreis Bitburg-Prüm, the Kreis Donnersbergkreis, the Kreis Rhein-Hunsrüche, the Kreis Südliche Weinstrasse, and the Kreis Trier-Saarburg in the Land of Rhineland Palatinate; and the Kreis Altmarkkreis in the Land of Saxony-Anhalt. In Italy, we excluded the Regions of Emilia-Romagna, Piemonte, and Sardegna.

Whether we excluded an entire Member State or a smaller administrative unit depended on whether we had identified in the June 1999 proposed rule the administrative unit we would recognize as a region within a particular Member State in the event of a CSF outbreak. We had identified such administrative units for Germany and Italy (the ''kreis'' in Germany and the ''region'' in Italy), but not for the other Member States of the EU.

We are now proposing to apply the certification requirements established by our April 2003 final rule to all the areas in Italy and Germany listed above and to Luxembourg. In addition, we would require the EC to certify that commodities (breeding swine, swine semen, and fresh pork and pork products) are not exported from—and have not been commingled with swine from—restricted zones in the EU during the following time periods: (1) A period of 6 months after the last case of CSF in domestic swine in the restricted zone; or (2) until restrictions put in place by the EU because of CSF in wild boar in the restricted zone are released. We consider this action warranted because we consider the EU to be an homogeneous region of low CSF risk (although one in which CSF outbreaks may continue to occur) and because the EC has appropriate control measures in place to mitigate the risk of continuing outbreaks.

We consider the EU to be homogeneous with regard to CSF despite the fact that we have treated certain kreis in Germany and Regions in Italy slightly differently from the rest of those countries during our rulemaking process. Our June 1999 proposed rule excluded three kreis in Germany and three Regions in Italy from consideration as part of the region recognized in our April 2003 final rule. Because these areas had experienced outbreaks within 6 months before collection of data for the 1999 risk analysis, the model excluded consideration of exports from those areas. Exclusion of those areas was a policy decision based on the regionalization approach being used by APHIS at the time.

However, the model used for the risk analysis was based on the assumption that outbreaks would continue to occur in the EU. Even with this assumption, the risk analysis concluded that the risk of exporting CSF from the EU in breeding swine, swine semen, and fresh pork was low. Outbreaks did, in fact, occur in some German kreis other than the three excluded from the June 1999 proposed rule—as well as in France, Spain, and Luxembourg, which were subject to the June 1999 proposed rule—and to provide the public an opportunity to comment upon the outbreaks, we did not include those kreis and Member States in our April 2003 final rule. However, we consider the CSF risk posed by commodities from the German kreis and Italian Regions that were excluded from the proposed rule, as well as from those areas and Member States that had outbreaks subsequent to the proposed rule, to be equivalent to the CSF risk from the other EU–15 Member States (as discussed above, in April 2004 we added France and Spain to the EU region we recognized in April 2003). We consider the risk from the EU–15 as a whole to be within the parameters of the risk analysis, and believe the risk from continuing CSF outbreaks in any part of the EU–15 would be adequately mitigated by the control mechanisms implemented in the EU.

Thus, we are proposing to apply the same import conditions for swine and swine products with regard to CSF to a region consisting of all of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, the Republic of Ireland, Spain, Sweden, and the United Kingdom. The conditions for pork, pork products, and live swine would be set forth in § 94.24. The conditions for swine semen would be set forth in § 98.38.

The EU–15 as a Region of Low Risk for CSF

In evaluating the CSF risk from imports of breeding swine, swine semen, and swine products from the EU–15, we took into consideration the following characteristics of that region:

- The region contains a known source of CSF risk (*e.g.*, infected wild boar) that may spread the disease virus to EU domestic swine, resulting in continuing outbreaks of CSF in the region, but veterinary officials in the region have established risk mitigation measures adequate to prevent widespread exposure and establishment of the disease;
- Specific mitigation measures in place include surveillance, epidemiological investigations, diagnostic capability, and emergency response capacity that are sufficient to identify the disease, establish appropriate control zones, and implement all measures necessary to effectively limit the spread of CSF from the region; and
- Veterinary officials maintain contingency plans defining proactive approaches to CSF control: The veterinary officials have sufficient legal powers, a detailed chain-of-command, and appropriate resources, including emergency funds, laboratory staff, equipment and infrastructure, to carry out a rapid and effective eradication campaign; there is an instruction manual detailing all procedures, instructions, and measures, including emergency vaccination plans if deemed necessary, to be implemented in the event of a CSF outbreak; and appropriate staff regularly receive training and conduct drills in CSF diagnosis, control measures, and communication techniques.

Included in the EC request to APHIS that resulted in our April 7, 2003, final rule was a request that was made in the context of the Veterinary Equivalence Agreement (VEA) between the United States and the EU, which was enacted in 1998. (The stated objective of the VEA is to facilitate trade in live animals and animal products between the EU and the United States by establishing a mechanism for the recognition of equivalence of sanitary measures, consistent with the protection of public and animal health, and improve communication and cooperation on sanitary issues.) The EC requested that APHIS adopt the EC approach to regionalization for CSF. This would require APHIS to establish a new approach to dealing with outbreaks of CSF in the EU–15. As a result of our review of the information provided, we are proposing to establish a new approach that will adopt many elements of the EC approach to dealing with outbreaks of CSF in the EU–15. Rather than responding to outbreaks through rulemakings specific to each outbreak, we are proposing in this document to establish actions that we would take in the event of a CSF outbreak in the region. Our proposal and the way in which it differs from current practice is explained below. While the approach we are proposing would, in this case, apply specifically to the EU–15, we would accept requests and supporting information from other regions interested in being considered for a similar approach.

Currently, § 92.3 of the regulations provides that whenever the EC establishes a quarantine for a disease in the EU in a region APHIS recognizes as one in which the disease is not known to exist and the EC imposes prohibitions or other restrictions on the movement of animals or animal products from the quarantined area in the EU, such animals and animal products are prohibited importation into the United States. Additionally, APHIS published a final rule on May 4, 2004 (69 FR 25817–25820, Docket No. 02–001–2) that established procedures to follow when a region that we recognize as free of an animal disease experiences an outbreak of that disease. If a region of the world that is considered free of CSF experiences an outbreak of CSF, APHIS will prohibit or restrict immediately the importation of live swine, fresh pork and pork products, and swine semen from that region into the United States. We then may publish an interim rule in the **Federal Register** as soon as possible that removes that region from the lists in §§ 94.9 and 94.10 of the regulations of regions in which CSF does not exist and that prohibits or restricts, by regulation, the importation of live swine, fresh pork and pork products, and swine semen. We accept public comment on the interim rule for a specified period of time. If the outbreak is eliminated in the region in question and a sufficient amount of time passes (generally defined as consistent with OIE recommendations) to ensure that the disease has been eradicated, we evaluate the risk of resuming imports from the region. If we believe the results of the risk evaluation support reinstatement of the region's previous CSF-free status and resumption of the importation of the prohibited swine and swine products into the United States, we make the evaluation available to the public and solicit public comment on it. If, after considering the public comments, we still consider it warranted to reinstate the region's CSF-free status, we publish a final rule in the **Federal Register** listing the region as free of CSF, and we allow importations of swine and swine products to resume.

We are proposing in this document that, whenever an outbreak of CSF occurs in the EU–15 and the competent veterinary authority of the EU–15 Member State establishes a quarantined area for CSF (also referred to in this document as a ''restricted zone''), swine and swine products will be prohibited importation into the United States from that zone. No action would be required by APHIS; the prohibition would take effect immediately. Swine and swine products would not be allowed importation from the region unless they are accompanied by certification by an official of the competent veterinary authority of the EU–15 Member State that the prohibitions set forth in this proposed rule regarding restricted zones (discussed below) have been met.

In the case of an outbreak of CSF in EU domestic swine, the importation prohibitions would remain in effect for 6 months following the depopulation of swine and the cleaning and disinfection of the last infected premises in the restricted zone, even if the competent veterinary authority of the EU–15 Member State removes its designation of the area as a restricted zone before 6 months have elapsed. In the case of a restricted zone established because of the detection of CSF in wild boar, the importation prohibitions would remain in place until the competent veterinary authority of the EU–15 Member State removes its designation of the area as a restricted zone. (The issue of wild boar is discussed further in this document under the heading ''Wild Boar.'') The lifting of the prohibitions on imports into the United States from a restricted zone would take effect at the times described above. No action by APHIS would be required. However, APHIS would reserve the right to make site visits and review documentation related to the outbreak and eradication activities. In considering the CSF risk in the EU–15, we evaluated both the ability of officials in that region to ensure that such restricted zones would be effectively established and maintained and the ability of the officials to ensure that prohibitions on the importation into the United States of swine and swine products from the restricted zones would be effectively enforced.

In §§ 94.0 and 98.30, we would define *restricted zone for classical swine fever* to mean an area, delineated by the relevant competent veterinary authorities of the region in which the

area is located, that surrounds and includes the location of an outbreak of CSF in domestic swine or detection of the disease in wild boar, and from which the movement of domestic swine is prohibited. We are not proposing to specify how far from an outbreak a restricted zone must extend because factors such as geographic boundaries could influence the necessary distance. However, we did evaluate the policies of the EC for establishing restricted zones when considering whether to consider the EU–15 as a region of low-risk for CSF. This is discussed in more detail below under ''EU Animal Health Controls.''

We believe this new approach is warranted for the EU–15 because that region has demonstrated the capability to effectively prevent the spread of CSF from areas where outbreaks occur. Plus, as a precautionary measure, imports of swine and swine products from the EU–15 into the United States will be restricted to address the recognized probability of these outbreaks occurring from time to time.

Because we are proposing to recognize the EU–15 as a single region that poses a low risk for CSF, we would remove from §§ 94.9(a) and 94.10(a) of the regulations the EU–15 Member States currently listed as regions in which CSF is not known to exist. The EU–15 would be included in proposed §§ 94.9(b) and 94.10(b) as a single region of low-risk for CSF.

Basis for Consideration of the EU–15 as a Region of Low-Risk for CSF

We believe that consideration of the EU–15 as a single low-risk region for CSF is warranted based on the risk analyses described above, upon which we based on our April 2003 final rule, and on our knowledge of the veterinary infrastructure and legislation in the EU. These considerations are discussed in detail in an APHIS document titled ''APHIS Risk Considerations on Importation of Classical Swine Fever (CSF) Virus in Breeding Swine, Swine Semen, and Fresh Pork from a European Union Region of Fifteen Member States.'' The document can be obtained by calling or writing to the person listed in this document under **FOR FURTHER INFORMATION CONTACT**. It is also available on the Internet at *http://www.aphis.usda.gov/vs/ncie/reg-request.html.* At the bottom of that Web site page, click on ''Information previously submitted by Regions requesting export approval and supporting documentation.'' At the next screen, click on the triangle beside ''European Union/Not Specified/Classical Swine Fever,'' then click on the triangle beside ''Response by APHIS,'' which will reveal a link to the document.

The estimates of risk in the analyses we conducted regarding CSF in the EU–15 suggest that the EU's control mechanisms, combined with the risk mitigation measures we established in the April 2003 final rule, are sufficiently effective to mitigate the risk of introducing the CSF virus to the United States via exports of the swine and swine products that would be eligible for importation into the United States under this rule.

The risk estimated in the risk analyses regarding the EU that we conducted in 1999 and 2000 was based on quantitative data reflecting the effects of EU regulations that were in place during a severe CSF outbreak in 1997 and 1998 that occurred extensively in the Netherlands and that spread to other EU Member States. Although the outbreak was considered the most severe the EU ever experienced and CSF did spread during that outbreak, our quantitative estimates of risk showed that the risk to the United States of CSF introduction due to that most severe outbreak was low. Since that outbreak, the EU has implemented measures to strengthen its response to a CSF outbreak. Therefore, with the continued application of EU regulations, any risk from future CSF outbreaks in the EU–15 is expected to also be low, unless an outbreak occurs that is more severe than the one in 1997–1998—*i.e.*, that poses a risk greater than that evaluated in the analysis. In the event of a more severe outbreak or any other circumstance the Administrator considers to pose a risk (such as evidence of unreported CSF outbreaks or significant deterioration of veterinary infrastructure or control in the region), the APHIS Administrator would reserve the right to take whatever action is necessary to ensure that CSF is not introduced into the United States.

EU Animal Health Controls

In general, our proposed classification of the EU–15 as a region of low risk for CSF is based on continued adherence in the Member States to EU animal health controls, some of which are described below, as well as on the measures we established in our April 2003 final rule. However, in one way, we believe it is necessary to require a measure that exceeds the EU controls. This measure has to do with the length of time the prohibition on the importation into the United States of swine and swine products from a restricted zone is maintained. We discuss this measure at greater length below, under the heading ''Prohibition of Importations from a Restricted Zone.''

Animal health regulations imposed in the EU are harmonized and binding upon all Member States. Requirements include compulsory notification of OIE List A diseases, including CSF, and laboratory testing for CSF on all sick swine if CSF is suspected. Member States are required to have CSF contingency plans and, if applicable, eradication plans for CSF in wild boar populations.

Swine are moved freely among EU Member States and within Member States. Swine born in one Member State are routinely fattened or slaughtered in another. Animals moving between Member States are required to be accompanied by an official health certificate issued by an official veterinarian appointed by the competent veterinary authority of the Member State. Prior notification of the movement is reported electronically through an electronic network linking authorities of the EC and Member States.[3]

Farm registration is mandatory, and each holding is assigned a unique identification number by the competent veterinary authority of the Member State. Animal identification is compulsory. Breeding swine must be identified with a unique identification number (either by ear tag or tattoo), and fattening swine must be identified by the holding registration number. This information is maintained by each Member State.

If CSF is detected anywhere in the EU, control mechanisms are activated in accordance with EU legislation. When CSF is suspected on a swine holding, a clinical investigation is conducted by the competent veterinary authority of the Member State to confirm or rule out the disease, and an epidemiological investigation is carried out. Movement of swine from the holding under suspicion is prohibited, and biosecurity measures are implemented to prevent spread of the disease.

If CSF is confirmed, all swine on the holding containing infected swine must be depopulated, and the carcasses must be disposed of after being treated to inactivate the CSF virus under official supervision. Two types of zones are

[3] TRACES (Trade Control and Export System) is replacing ANIMO by the end of 2004 as the computerized system mandated by EU law to track animal and animal product movement between Member States, as well as to track imports from non-EU countries into the EU. Data are entered by local veterinary authorities in each Member State and are shared over a network with the rest of the EU. The system is administered by a private contractor under the oversight of the EC and the EU Court of Auditors.

established around an outbreak of CSF in EU domestic swine—''protection zones'' and ''surveillance zones.'' The protection zone extends at least 3 kilometers from the outbreak. The surveillance zone extends at least 10 kilometers from the outbreak. For the purpose of our regulations, we would consider the combination of an EU protection zone and surveillance zone to constitute a restricted zone. When establishing zones, the competent veterinary authority of the Member State is required by EU legislation to take into account the following:

- The results of the epidemiological investigation;
- The geographical situation, particularly natural or artificial boundaries;
- The location and proximity of holdings;
- Patterns of movements and trade in swine and the availability of slaughterhouses;
- The facilities and personnel available to control any movement of swine within the zones, in particular if the swine to be killed need to be moved away from their holding of origin.

Veterinary authorities are required to take all necessary measures, including posting signs and alerting the media, to inform the public of the imposed restrictions and must use appropriate measures to enforce the restrictions. Veterinary authorities of Member States collaborate in establishing zones that overlap their borders.

In accordance with EU regulations, premises located within the protection zone are prohibited by the Member State from moving swine out of that zone for at least 30 days following the depopulation of swine and the cleaning and disinfection of the last premises in the zone infected with CSF. Premises within the surveillance zone are prohibited by the Member State from moving swine out of that zone for at least 20 days following the depopulation of swine and the cleaning and disinfection of the last premises in the protected zone infected with CSF. A census is conducted of all swine in both the protection and surveillance zones. Clinical examinations are conducted of all swine within the protection zone.

An epidemiological inquiry is made into the origin of the virus in the infected swine, and contacts are identified for traceback and traceforward investigations. Isolates of the virus are genetically typed by the EU Reference Laboratory in Hanover, Germany.

Under official supervision of the competent veterinary authority of the Member State, meat of swine slaughtered during the period between the probable introduction of disease and the implementation of control measures is traced and processed in such a way as to destroy or inactivate the CSF virus. Likewise, swine genetic products collected during this time are traced and destroyed under official supervision in such a way as to avoid the risk of spread of the CSF virus.

After the depopulation of swine, the buildings, equipment, vehicles, and other articles that may have been contaminated with the CSF virus must be cleaned and disinfected under official supervision using approved disinfectants.

Swine may not be reintroduced onto a holding that contained infected swine until at least 30 days after the required cleaning and disinfection. Any swine reintroduced onto the holding must be monitored to make sure that none develop antibodies to CSF.

The EU does not vaccinate domestic swine for CSF. However, with EC approval, emergency vaccination may be used in cases where CSF has been confirmed and epidemiological data suggest that the disease threatens to spread.

Whenever CSF is detected in a wild boar, the competent veterinary authority of the Member State, in consultation with an expert panel of veterinarians, hunters, wildlife biologists, and epidemiologists, defines the infected area, implements appropriate measures to reduce the spread of the disease, develops and submits for EC approval an eradication plan, and audit the effectiveness of measures adopted to eradicate CSF from the infected area. These measures require that all holdings of domestic swine in the infected area be placed under official surveillance, an official census of swine be conducted, swine movement be restricted, biosecurity measures be implemented, and testing for CSF be conducted on all sick or dead swine. Further, all wild boar shot or found dead must be examined and tested for CSF by an official veterinarian designated by the competent veterinary authority of the Member State. In addition, the measures taken may include suspension of hunting and a ban on feeding wild boar. The veterinary authority must also ensure that the CSF isolate is genetically typed. Adjacent Member States collaborate in establishing control measures in cases where the infected wild boar are found close to common borders.

As part of an approved eradication plan, emergency vaccination of wild boar may be conducted in situations where CSF has been confirmed and epidemiological data suggest that the disease threatens to spread. The vaccination area must be part of the defined infected area, and appropriate measures must be taken to prevent spread of the vaccine virus to domestic swine. Currently, there is an ongoing emergency vaccination program for wild boar in infected areas within Germany and Luxembourg.

Requirement in Addition to EU Controls

As we stated above, we believe it is necessary to require a CSF control measure in the EU–15 that exceeds EU controls and the conditions imposed by our April 2003 final rule. This measure is the length of time the prohibitions on the exportation of swine and swine products to the United States are maintained. We discuss this measure below.

Prohibition of Importations From a Restricted Zone

Current EU regulations allow CSF restrictions in a protection zone (that area extending at least 3 kilometers from an infected holding of domestic swine) to be removed 30 days after completion of preliminary cleaning and disinfection measures on the infected holding. Restrictions in a surveillance zone must stay in place at least 20 days after such cleaning and disinfection. Restrictions are removed only after clinical examinations and serology indicate that any swine remaining in the area are free of CSF. Presumably, after restrictions are released, swine from the area could be moved throughout the EU.

We are concerned by observations of recurrence of CSF in certain areas shortly after such restrictions have been removed by the EU and swine movement from the areas has commenced. For example, in December 2001, an outbreak was confirmed in Osoma, Spain, 22 days after release of movement restrictions by the EU. In another case, an outbreak in Luxembourg in August 2002 was epidemiologically linked to an outbreak that occurred in June 2002, and occurred 27 days after release of movement restrictions by the EU. During the 1997–1998 epidemic, veterinary authorities in the EU usually found it necessary to maintain movement restrictions for more than 30 days following an outbreak. These observations suggest that restricting movement for only 30 days may be insufficient to ensure that the region remains unaffected.

Further, as discussed below, we believe that OIE standards support restriction of movement for more than 30 days. As discussed above, we are

proposing to consider the EU–15 as a region of low risk for CSF, rather than as a region in which CSF is not known to exist. The OIE standard that would be relevant to such a region is the standard for a country or zone free of CSF in domestic swine but with infection in the wild swine population.[4] In such situations, OIE recommends that, where a stamping out policy without vaccination has been implemented for CSF control, recognition of the region as CSF-free may be acquired 6 months after the last outbreak in domestic swine.

We are in agreement with the OIE recommendation that restrictions on the movement of swine and swine products from a CSF quarantined area be maintained for 6 months, and consider it consistent with our proposed consideration of the EU–15 as a region that poses a low risk of CSF. Further, maintenance of such restrictions for 6 months is consistent with our stated intent in our December 2000 risk analysis to accept exports only from regions that have not experienced a CSF outbreak within the previous 6 months.[5] This is why we are proposing to provide that our prohibition on the importation of swine and swine products from a restricted zone established because of an outbreak of CSF in domestic swine remain in place for at least 6 months following the depopulation of swine and the cleaning and disinfection of the last infected premises in the zone. As noted above, the prohibition of the importation of swine and swine products from a restricted zone established because of the detection of CSF in wild boar would remain in place until the restricted zone status of the area is removed by the competent veterinary authority of the EU–15 Member State.

Wild Boar

Under our current regulations, we do not remove a region from the lists in §§ 94.9(a) and 94.10(a) of regions considered free of CSF if the disease is detected in wild boar in the region but not in domestic swine. This approach is consistent with APHIS domestic regulations, which do not regulate wild boar in the United States for swine diseases. However, under this proposed rule, we would prohibit importations of swine and swine products from areas in the EU–15 placed under quarantine by the competent veterinary authority of an EU–15 Member State because of the detection of CSF in wild boar, even if CSF has not been detected in domestic swine in the area. Although the estimates of CSF risk from the region identified in our 1999 and 2000 risk analyses were based on data related only to outbreaks and control measures in EU domestic swine (*i.e.*, data from wild boar outbreaks were not included), we recognize that EU control measures implemented in response to outbreaks in wild boar had a mitigating effect on the spread of CSF in domestic swine. Therefore, we believe that EU control measures for CSF in wild boar are a critical component of the overall EU controls for CSF. Data indicate that wild boar continue to be a potential source of infection in domestic swine. For example, infected wild boar are the suspected source of virus linked to an August 2003 outbreak in Luxembourg, an April 2002 outbreak in France, and multiple outbreaks in Germany. The EU recognizes the risk to its domestic swine population because of the endemic CSF infection in wild boar and has implemented eradication plans and contingency measures to deal with this problem. To protect domestic swine herds throughout the region, the EC has placed restrictions on movement of domestic swine from infected wild boar areas. It is likely that the EU restrictions on regions containing infected wild boar contribute significantly to the effectiveness of EU control measures.

Certificate for Swine

Section 93.505 of the regulations requires that, except for swine from Canada, all swine intended for importation into the United States be accompanied by official certification regarding the health status of the swine and the disease status of the region of origin. Paragraph (a) of § 93.505 requires that the certificate accompanying the swine show that the entire region of origin of the swine is free of CSF. In accordance with our proposed action to allow the importation of breeding swine from the EU–15, we are proposing to change the language in § 93.505 accordingly, to allow for the importation of live swine from the EU–15.

Application of this Approach to Other Regions

Section 92.2 of the regulations defines the type of information that must be included with the request of a country or countries to APHIS for recognition of the animal health status of a region. Evaluation of this information would constitute the first step in consideration of a new regulatory approach for the region. As part of its consideration, APHIS would determine whether it might be appropriate to revise its approach dealing with outbreaks in the region that made the request. The results of these considerations will be reflected in regulatory changes made through rulemaking. Aspects of the rulemaking process are discussed in § 92.2.

Authorized Inspectors

Currently, there is a requirement in § 94.24(c) that certificates required under § 94.24 be presented by the importer of swine and swine products to the appropriate Customs and Border Protection officer at the port of arrival. We are proposing to require instead that the certificates be presented to an authorized inspector, which is defined in § 94.0 as any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations. This change would reflect the fact that, for some imports, it is an APHIS employee who accepts the certificate at the port of arrival.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction into the United States or dissemination of any pest or disease of livestock. Under this authority, APHIS is proposing to establish provisions for imports of swine and swine products from the EU–15 under conditions we believe will guard against the introduction of CSF into the United States from that region.

Below is the economic analysis for the changes proposed in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who

[4] OIE, Terrestrial Animal Health Code-2003, Part 2, Chapter 2.1.13.

[5] Risk Analysis for Importation of Classical Swine Fever Virus in Swine and Swine Products from the European Union—December 2000.

may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

CSF is a highly contagious and fatal disease of swine. It was eradicated from the United States in 1976 after a 16-year effort, at a cost to USDA and individual States of about $140 million ($455 million in 2003 dollars). The potential for reintroduction of CSF into the United States remains a major concern, not only because of production losses and eradication costs, but also because of the adverse effects reintroduction would have on U.S. swine and pork exports.

APHIS determines, based on disease risk evaluations, whether animals and animal products may be exported from foreign regions to the United States. If a region recognized by APHIS as free of a specific animal disease experiences an outbreak, generally an interim rule is issued prohibiting or restricting potentially infected imports. Once the outbreak has been eliminated, and a period of time has elapsed sufficient to allow the animal disease situation in the region to stabilize, the region's previous disease-free status may be restored. APHIS personnel conduct a site visit and reevaluate the risk by conducting a risk analysis. If, based on the analysis, APHIS believes it is appropriate to once again consider the region free of the disease, APHIS publishes a notice in the **Federal Register** soliciting public comments on the analysis. Any comments received are reviewed and each issue raised by commenters is considered. If, after review of the comments, APHIS continues to consider it appropriate to once again recognize the region free of the disease, a final rule is published in the **Federal Register** giving notice of such recognition.

We believe this proposed rule would enable APHIS to respond more quickly to changes in CSF conditions within the EU–15, while maintaining the Agency's sanitary standards. The proposed rule would change the procedure by which imports of swine, pork and pork products, and swine semen would be allowed to resume following the elimination of a CSF outbreak in the EU–15. Separate rulemaking would no longer be required each time an area within the region experiences a CSF outbreak and the disease is subsequently eliminated. Rather, APHIS would recognize quarantine decisions made by the competent veterinary authority of an EU–15 Member State and prohibit the importation of swine and swine products from restricted zones in the EU–15 established by the competent veterinary authority of an EU–15 Member State. As an additional safeguard, imports of swine, fresh pork and pork products, and swine semen into the United States from the restricted zone would be prohibited for a period of 6 months following the depopulation of swine and the cleaning and disinfection of the last infected premises in the zone. Restrictions and prohibitions we would establish because of the detection of CSF in wild boar would remain in place until the restricted zone status of the area is removed by a competent veterinary authority of the EU–15 Member State.

An alternative to the proposed rule would be to not change the regulations—*i.e.*, to continue to initiate rulemaking whenever the CSF situation within the EU–15 changes. Continuing with the current procedures would not achieve the Agency objective of improving the Agency's responsiveness to CSF situation changes while maintaining adequate disease prevention measures. A second alternative would be to consider the EU–15 as a single region of low risk for CSF, but not require that at least 6 months elapse after eradication of a disease outbreak in the region before the importation of swine and swine products into the United States could resume. This alternative would forfeit the additional sanitary assurance that the 6-month period is intended to provide to the U.S. swine industry that the reestablished imports would be CSF-free. We believe that this proposed rule would be preferable in allowing resumption of imports in a timelier manner, while ensuring that sanitary standards are maintained. As noted above, we invite public comment on this proposed rule, including comment on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed criteria should be supported by an explanation of why the changes should be made.

Expected Effects of the Proposed Rule

This proposed rule could affect U.S. imports of swine, pork and pork products, and swine semen from the EU–15 in several ways. One of the effects would be potential additional restrictions on the importation of swine semen from certain EU–15 Member States. Additionally, the regulatory process used to establish import restrictions for areas affected by CSF, and to remove those restrictions when the disease is eliminated, would be simplified and made timelier. We believe the proposed rule would also result in more efficient use of APHIS resources. These areas of potential effects are discussed in turn.

Change in Swine Semen Requirements

The EU–15 consists of the following Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, the Republic of Ireland, Spain, Sweden, and the United Kingdom. APHIS considered five of the Member States—Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom—to be free of CSF even before publication of our April 2003 final rule. In that final rule, we recognized—with the exception of specified regions in Germany and Italy—the countries of Austria, Belgium, Germany, Greece, Italy, the Netherlands, and Portugal as a single region in which CSF is not known to exist. That final rule also set forth conditions under which breeding swine, pork and pork products, and swine semen could be imported into the United States from that region.

The remaining three Member States-France, Luxembourg, and Spain-as well as specified regions in Germany and in Italy, were not included in the region recognized by the final rule because of outbreaks of CSF either before or after publication of the June 1999 proposed rule on which the April 2003 final rule was based. However, as discussed above, we published a final rule in the **Federal Register** in April 2004 that recognized France and Spain as part of the CSF-free region we had established in our April 2003 final rule.

This proposed rule would consider the EU–15 to be a single region of low-risk for CSF. Therefore, that region would include the seven Member States we recognized in whole or in part as CSF-free in the April 2003 final rule (Austria, Belgium, Germany, Greece, Italy, the Netherlands, and Portugal), the five Member States we already considered CSF-free before the April 2003 final rule (Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom), the two Member States we recognized as CSF-free in our April 2004 final rule (France and Spain), and Luxembourg. Under the provisions of this proposed rule, each of the 15 Member States would be subject to the import conditions set forth in the April 2003 final rule and to the restrictions added in this document concerning waiting periods before release of restrictions on zones where outbreaks have occurred. In considering the effects of these changes, the key questions are: (1) In what ways do the current import requirements for

Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom differ from the import requirements set forth in this proposed rule; and (2) what effects would result for those five Member States due to the changes in requirements for export to the United States?

This proposed rule prescribes conditions for the importation of breeding swine, swine semen, and pork and pork products from areas classified as low risk for CSF. Movement restrictions require that there be no commingling of commodities intended for export to the United States (or of the donor boars of swine semen intended for export to the United States) with like commodities from areas where CSF is known to exist. Movement of commodities intended for export to the United States through areas where CSF is known to exist is permitted only by sealed means of conveyance. Sanitary certification that these provisions have been met is required.

Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom are already complying with the proposed conditions for pork, pork products, and breeding swine, and, in fact, were meeting these conditions before our April 2003 final rule. However, with respect to swine semen, the proposal would require that before the semen is exported to the United States, the donor boar must be held at the semen collection center for at least 40 days following semen collection, to ensure that the boar does not exhibit any clinical signs of CSF. This would be a new risk mitigation measure for swine semen exported to the United States from these five Member States.

Three of the five Member States, Denmark, the Republic of Ireland, and the United Kingdom, have histories of swine semen exports to the United States. From 1994 through 2002, the United States imported an average of 2,474 straws of swine semen annually. The average yearly share of U.S. swine semen imports supplied by the three Member States over the 9-year period was about 26 percent. The United Kingdom was the major source among the three Member States, supplying all of the three Member States' swine semen exports to the United States in 5 of the 9 years.

Reportedly, donor boars are largely resident at swine collection centers, so costs associated with the animals' maintenance would be affected little by the 40-day holding period. A potential issue is whether storage for 40 days before exportation would affect the quality of the collected semen and therefore affect import demand. APHIS welcomes information on this issue that may help in evaluating the effect on swine semen importers.

More Timely Reestablishment of CSF-Free Status

The proposed procedure for reestablishing CSF-free status for an area that has been under quarantine is expected to require less time than current procedures, notwithstanding the 6-month restriction following the last case of CSF and completion of disinfection measures. More timely recognition of an area's CSF-free status would allow imports of swine and swine products from the area to resume sooner than at present. The effect of this procedural change would depend on the difference in time required by the two regulatory approaches, and the additional swine, swine meat, and swine genetics that would be imported because of more timely recognition of an area's reestablished CSF-free status.

APHIS published a final rule on May 4, 2004 (69 FR 25817–25820, Docket No. 02–001–2) that codifies the procedures APHIS follows when a region free of a particular disease has an outbreak and APHIS responds to that outbreak by publishing an interim rule prohibiting or restricting imports from that region. APHIS will reassess the disease situation in that region, and, before taking any action to relieve or finalize prohibitions or restrictions imposed by the interim rule, will make information regarding its reassessment of the region's disease status available to the public for comment. Based on that reassessment, including comments received regarding the reassessment information, APHIS will either publish a final rule reinstating the disease-free status of the area, or a portion of the area covered by the interim rule; publish an affirmation of the interim rule that imposed prohibitions or restrictions on imports of animals and animal products from that area; or publish another document for comment. Under procedures in place previously, APHIS affirmed the initial interim rule, and then conducted new notice-and-comment rulemaking (proposed rule, comment period, final rule) in order to restore a region's disease-free status.

The new procedures the Agency codified allow for more timely reinstatement of an area's disease-free status, while protecting the U.S. swine sector. We believe the rule we are now proposing would further improve the timeliness of APHIS's recognition of changes in CSF status in the EU–15.

As noted in the economic analysis for the May 2004 final rule, quantities of animals and animal products imported by the United States are relatively small in comparison to the total quantities available domestically. In addition, the majority of the imports come from a small fraction of the world's disease-free regions. Also, it is very difficult to quantify the potential economic effects of more timely recognition of changes in CSF status. We believe the major benefit of this proposed rule would be improved trade relations between the United States and the EU. Less than 6 percent of domestically available swine (U.S. production plus imports minus exports) and less than 3 percent of domestically available pork are imported. The majority of swine imports come from one country, Canada, and the majority of swine product imports come from two, Canada and Denmark. We cannot predict the number of swine or quantity of swine products that this proposed rule would affect, but they are unlikely to be significant. One or more of the areas not yet recognized by the United States as free of CSF-Luxembourg and parts of Germany and Italy—may be among the first to benefit from this rule.

More Efficient Use of APHIS Resources

A third area of impact would be the effect of the proposed rule on APHIS operations. Just as the proposed rule could enable imports of swine, swine meat, and swine genetics to resume more quickly from areas that experience and then eradicate outbreaks of CSF, so too would it result in fewer site visits, risk analyses, **Federal Register** publications and other rulemaking tasks for APHIS. Resources that are devoted to tasks currently required for changing the CSF status of areas in the European Union would become available for other uses.

As with the impact on imports, expected gains in the efficient use of Agency resources cannot be quantified. They would be realized in terms of the additional time APHIS staff would have for other tasks, and would depend on the frequency with which CSF quarantines and CSF-free status reinstatements occur within the European Union.

We believe that the benefits that would accrue from this rule—*i.e.*, improved trade relations with the EU through more timely recognition of changes in CSF status, as well as increased efficiency in use of APHIS resources—would outweigh any increased costs to importers of swine semen from certain EU Member States that would result from an extended waiting period between when the semen is collected and when shipment may occur.

Effects on Small Entities

As a part of the rulemaking process, APHIS evaluates whether proposed regulations would likely have a significant economic impact on a substantial number of small entities. U.S. entities that could be affected by the proposed rule would be swine and pork producers and swine product wholesalers.

The size of the potentially affected entities is unknown. However, it is reasonable to assume that most are small in size under the U.S. Small Business Administration's (SBA) standards. The SBA defines small hog and pig farms as those earning not more than $750,000 in annual receipts. National Agricultural Statistics Service data on hog farm inventories include farm size categories, including the number of farms with more than 1,000 head. Only those swine operations with inventories well in excess of 3,000 animals would likely earn more than $750,000 in yearly sales. About 85 percent of 78,895 hog and pig farms in 2002 held inventories of fewer than 1,000 head. The number of operations with fewer than 3,000 is very likely to be much higher than 85 percent of all hog and pig farms. An earlier Census of Agriculture (1997) had more detail on farm size and showed that over 95 percent of U.S. swine operations held inventories of less than 2,000 head. Clearly, most swine and pork producers are small entities.

Likewise, swine product wholesalers are also mainly small entities. The SBA small entity definition for these businesses is not more than 100 employees. We do not know the size distribution of meat wholesalers, but the 2002 Economic Census indicates that the 2,889 establishments in that category had an average of 15 employees.

We invite comment from the public that would clarify the number of swine operations and swine product wholesalers that are small entities that would be affected by this rule.

Although the industries that would be affected by the proposed rule are largely composed of small entities, the effects are not expected to be significant. Imports of swine semen from Denmark, Finland, the Republic of Ireland, Sweden, and the United Kingdom may be affected if the 40-day holding period for donor boars before the semen may be imported influences U.S. demand. However, even if there is an effect, most swine semen that is imported comes from other countries—Canada, in particular. The more timely reestablishment of an area's CSF-free status may affect individual entities that have arranged for imports from that area, but, as described, such effects are expected to be minor.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–046–1. Please send a copy of your comments to: (1) Docket No. 02–046–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

Under this proposed rule, we would apply a uniform set of importation requirements related to CSF to the EU–15 and prohibit for a specified period of time the importation of live swine and swine products from any area in the EU–15 that is identified by the competent veterinary authority of an EU–15 Member State as a restricted zone.

These importation requirements would necessitate the use of additional certification statements in connection with the importation of live swine, pork and pork products, and swine semen imported into the United Sates from the EU–15.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in the European Union who will complete certificates to export swine, pork and pork products, and swine semen to the United States.

Estimated annual number of respondents: 115.

Estimated annual number of responses per respondent: 8.695.

Estimated annual number of responses: 1,000.

Estimated total annual burden on respondents: 1,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Accordingly, we are proposing to amend 9 CFR parts 93, 94, and 98 as follows:

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 93.500, a new definition of *European Union–15 (EU–15)* would be added, in alphabetical order, to read as follows:

§ 93.500 Definitions.

* * * * *

European Union–15 (EU–15). The organization of Member States consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

3. In § 93.505, paragraph (a), the second sentence would be removed and two sentences would be added in their place to read as follows:

§ 93.505 Certificate for swine.

(a) * * * For domestic swine, the certificate shall also show that the entire region of origin is free of African swine fever and swine vesicular disease and that, for 60 days immediately preceding the time of movement from the premises of origin, no swine erysipelas or swine plague has existed on such premises or on adjoining premises. Additionally, except for the region consisting of the EU–15 for the purposes of classical swine fever, for which alternative certification is required under § 94.24(b)(4), for domestic swine the certificate shall show that the entire region of origin is free of classical swine fever.

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

4. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

5. In § 94.0, definitions of *European Union–15 (EU–15)* and *restricted zone for classical swine fever* would be added, in alphabetical order, to read as follows:

§ 94.0 Definitions.

* * * * *

European Union–15 (EU–15). The organization of Member States consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

Restricted zone for classical swine fever. An area, delineated by the relevant competent veterinary authorities of the region in which the area is located, that surrounds and includes the location of an outbreak of classical swine fever in domestic swine or detection of the disease in wild boar, and from which the movement of domestic swine is prohibited.

* * * * *

6. Section 94.9 would be amended as follows:

a. Paragraph (a) and footnote 10 would be revised to read as set forth below.

b. Paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), respectively.

c. A new paragraph (b) would be added to read as set forth below.

d. The introductory text of newly designated paragraph (c) would be revised to read as set forth below.

e. In newly redesignated paragraph (c)(1)(iii)(C)(*2*), the words ''paragraph (b)'' would be removed each time they occur and the words ''paragraph (c)'' would be added in their place.

f. In newly redesignated paragraph (c)(2), the words ''paragraph (b)'' would be removed and the words ''paragraph (c)'' would be added in their place.

g. In newly redesignated paragraph (c)(3), the words ''paragraph (b)'' would be removed each time they occur and the words ''paragraph (c)'' would be added in their place.

h. In newly redesignated paragraph (d), the words ''paragraph (b)'' would be removed and the words ''paragraph (c)'' would be added in their place.

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Chile; Fiji; Iceland; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Norway; and Trust Territory of the Pacific Islands.[10]

(b) The EU–15 is a single region of low-risk for CSF.

(c) Except as provided in § 94.24 for the EU–15, no fresh pork or pork product may be imported into the United States from any region where classical swine fever is known to exist unless it complies with the following requirements:

* * * * *

7. Section 94.10 would be revised to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world, except Australia; Canada; Chile; Fiji; Iceland; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Norway; and Trust Territory of the Pacific Islands.

(b) The EU–15 is a single region of low-risk for CSF.

(c) Except as provided in § 94.24 for the EU–15, no swine that are moved from or transit any region where classical swine fever is known to exist may be imported into the United States, except for wild swine imported into the United States in accordance with paragraph (d) of this section.

(d) Wild swine may be allowed importation into the United States by the Administrator upon request in specific cases under § 93.501 or § 93.504 (c) of this chapter.

8. Section 94.24 would be revised to read as follows:

§ 94.24 Restrictions on the importation of pork, pork products, and swine from the EU–15.

(a) *Pork and pork products.* In addition to meeting all other applicable provisions of this part, fresh pork and

[10] See also other provisions of this part and parts 93, 95, and 96 of this chapter, and part 327 of this title, for other prohibitions and restrictions upon the importation of swine and swine products.

pork products imported from the EU–15 must meet the following conditions:

(1) The pork and pork products must not have been commingled with pork or pork products derived from swine that have been in any of the following regions or zones:

(i) Any region when the region was classified in §§ 94.9(a) and 94.10(a) as one in which classical swine fever is known to exist, except for the EU–15; and

(ii) During the following time periods in any restricted zone in the EU–15:

(A) In a restricted zone established because of an outbreak of classical swine fever in domestic swine, during the 6 months following depopulation of the swine in the restricted zone and the cleaning and disinfection of the last infected premises in the zone; or

(B) In a restricted zone established because of the detection of classical swine fever in wild boar, until the designation of the zone as a restricted zone is removed by the competent veterinary authority of an EU–15 Member State.

(2) The swine from which the pork or pork products were derived must not have lived in any region or zone listed in paragraph (a)(1)(i) or (ii) of this section, and must not have transited any such region or zone unless moved directly through the region or zone in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination.

(3) The pork and pork products must be accompanied by a certificate issued by an official of the competent veterinary authority of the EU–15 Member State who is authorized to issue the foreign meat inspection certificate required by § 327.4 of this title, stating that the applicable provisions of paragraphs (a)(1) and (a)(2) of this section have been met.[19]

(b) *Live swine.* In addition to meeting all other applicable provisions of this title, live swine imported from the EU–15 meet the following conditions:

(1) The swine must be breeding swine;

(2) The swine must not have lived in any region or zone listed in paragraph (a)(1)(i) or (ii) or this section, must not have transited any such region or zone unless moved directly through the region or zone in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination, and must never have been commingled with swine that were in such a region.

(3) No equipment or materials used in transporting the swine may have previously been used for transporting swine that do not meet the requirements of this section, unless the equipment and materials have first been cleaned and disinfected; and

(4) The swine must be accompanied by a certificate issued by a salaried veterinary officer of the competent veterinary authority of the EU–15 Member State, stating that the conditions of paragraphs (b)(1) through (b)(3) of this section have been met.[20]

(c) The certificates required by paragraphs (a)(3) and (b)(4) of this section must be presented by the importer to an authorized inspector at the port of arrival, upon arrival of the swine, pork, or pork products at the port.

(Approved by the Office of Management and Budget under control number 0579–0218)

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND SEMEN

9. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

10. In § 98.30, definitions of *European Union–15 (EU–15)* and *restricted zone for classical swine fever* would be added, in alphabetical order, to read as follows:

§ 98.30 Definitions.

* * * * *

European Union–15 (EU–15). The organization of Member States consisting of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Republic of Ireland, Spain, Sweden, and the United Kingdom (England, Scotland, Wales, the Isle of Man, and Northern Ireland).

* * * * *

Restricted zone for classical swine fever. An area, delineated by the relevant competent veterinary authorities of the region in which the area is located, that surrounds and includes the location of an outbreak of CSF in domestic swine or detection of the disease in wild boar, and from which the movement of domestic swine is prohibited.

* * * * *

11. Section 98.38 would be revised to read as follows:

§ 98.38 Restrictions on the importation of swine semen from the EU–15.

In addition to meeting all other applicable provisions of this part, swine semen imported from the EU–15 must meet the following conditions:

(a) The semen must come from a semen collection center approved for export by the competent veterinary authority of the EU–15 Member State;

(b) The donor boar must not have lived in any region or zone listed in paragraph (b)(1) or (b)(2) of this section, must not have transited any such region or zone unless moved directly through the region or zone in a sealed means of conveyance with the seal determined to be intact upon arrival at the point of destination, and must never have been commingled with swine that were in such a region:

(1) Any region when the region was classified in §§ 94.9(a) and 94.10(a) of this chapter as one in which classical swine fever is known to exist, except for the EU–15; and

(2) During the following time periods in any restricted zone in the EU–15:

(i) In a restricted zone established because of an outbreak of classical swine fever in domestic swine, during the 6 months following depopulation of the swine in the restricted zone and the cleaning and disinfection of the last infected premises in the zone; or

(ii) In a restricted zone established because of the detection of classical swine fever in wild boar, until the designation of the zone as a restricted zone is removed by the competent veterinary authority of the EU–15 Member State.

(c) The donor boar must be held in isolation for at least 30 days prior to entering the semen collection center;

(d) No more than 30 days prior to being held in isolation as required by paragraph (c) of this section, the donor boar must be tested with negative results with a classical swine fever test approved by the Office International des Epizooties (World Organisation for Animal Health);

(e) No equipment or materials used in transporting the donor boar from the farm of origin to the semen collection center may have been used previously for transporting swine that do not meet the requirements of this section, unless such equipment or materials has first been cleaned and disinfected;

(f) Before the semen is exported to the United States, the donor boar must be held at the semen collection center and observed by the center veterinarian for at least 40 days following collection of the semen, and, along with all other swine at the semen collection center,

[19] The certification required may be placed on the foreign meat inspection certificate required by § 327.4 of this title or may be contained in a separate document.

[20] The certification required may be placed on the certificate required by § 93.505(a) of this chapter or may be contained in a separate document.

exhibit no clinical signs of classical swine fever; and

(g) The semen must be accompanied to the United States by a certificate issued by a salaried veterinary officer of the EU–15 Member State, stating that the provisions of paragraphs (a) through (f) of this section have been met.[3]

[Approved by the Office of Management and Budget under control number 0579–0218]

Done in Washington, DC, this 4th day of April 2005.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 05–7013 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 39]

RIN 1513–AA95

Proposed Establishment of the Shawnee Hills Viticultural Area (2002R–345P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the Shawnee Hills viticultural area in southern Illinois. This proposed 1,268,960-acre viticultural area is approximately 80 miles long east to west and approximately 20 miles wide from north to south. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive your written comments on or before June 7, 2005.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 39, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Library, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Rita Butler, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Washington, DC 20220; telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Shawnee Hills Petition

TTB received a petition from Dr. Theodore F. Wichmann, president of Owl Creek Vineyard, Inc., and Dr. Imed Dami, Illinois State Viticulturist, proposing the establishment of a new viticultural area in southern Illinois to be called ''Shawnee Hills.'' The proposed Shawnee Hills viticultural area lies largely within the Shawnee National Forest in Alexander, Gallatin, Hardin, Jackson, Johnson, Pope, Pulaski, Randolph, Saline, Union, and William counties. Encompassing a region of unglaciated hills between the Ohio and Mississippi Rivers, the proposed viticultural area is about 80 miles long east to west and 20 miles wide north to south, and it covers about 2,139 square miles or 1,268,960 acres.

People have raised grapes, including such important present-day wine varieties as Norton, in the proposed Shawnee Hills viticultural area since 1860, according to the petition, citing ''Grape Culture'' by W.E. Gould (1891). The proposed area contained 1,250 acres of vineyards in 1890, and vintners produced 19,750 gallons of wine in 1891, the petition adds, citing ''Grape and Wine Production in Illinois from 1983 to Present,'' by R.M. Skirvin, *et al.*, in ''Illinois Grape Growers and Vintners

[3] The certification required may be placed on the certificate required under § 98.35(c) or may be contained in a separate document.

Association Conference Proceedings,'' (2000). Currently, there are eight wineries and 51 vineyards with approximately 160 acres of planted wine varietals within the proposed area, the petition states, citing ''1999 Grape Growers and Vintner's Survey,'' by Imed Dami, in ''Illinois Grape Growers and Vintners Association Conference Proceedings,'' (2000).

Name Evidence

The Shawnee Indian Nation, led by Chief Tecumseh and his brother, The Prophet, occupied the southern Illinois hill country in the early 1800s in an attempt to stem the flow of white settlers from the east. As a result, the petition states, the Shawnee name became attached to the hills, and its continuing use is documented in academic and State government publications. For example, the book ''Land Between the Rivers'' (C.W. Horrell, *et al.*, 1973), as cited in the petition, describes the region as follows:

> South of the Mount Vernon hill country you come next to the Shawnee Hills [which mark] the southernmost limit of the prehistoric ice sheets. The Shawnee Hills culminate in Shawneetown Ridge, a heavily timbered wilderness of bluffs and knobs reaching up to an elevation of over a thousand feet, with rocky cliffs towering hundreds of feet above the valley floor. The Shawnee Hills are the heart of Southern Illinois [and] the 204,000 acre Shawnee National Forest. (pg. 11.)

The Illinois State Geological Survey map ''Landforms of Illinois'' (1980) labels the hills within the proposed viticultural area as the Shawnee Hills. In addition, an Illinois Department of Natural Resources brochure titled ''Illinois' Natural Divisions and Biodiversity'' (April 2002) describes the State's 14 unique natural regions. These regions are based upon such natural features as topology, geology, soils, and climate, as well as their unique flora and fauna. According to the brochure, the Shawnee Hills natural region consists of two sections, the Greater and the Lesser Shawnee Hills.

''Shawnee'' also appears in many other political and geographic names within the proposed viticultural area, including Shawneetown, Shawneetown Ridge, and the Shawnee National Forest, which lies largely within the proposed area. Furthermore, five of the wineries in the proposed viticultural area formed the ''Shawnee Hills Wine Trail'' in 1996, which is described in a brochure of the same name. According to the petition, the names ''Shawnee Hills'' and ''Shawnee Hills Wine Trail'' have been used numerous times in other national, State, and local publications.

Boundary Evidence

Academic and State government publications describe the boundaries of the Shawnee Hills landform, and the petition included copies of these publications. As described by Horrell, *et al.*, the Shawnee Hills is an unglaciated region, which extends across southern Illinois. The region is about 80 miles long, from the Ohio River in the east to the Mississippi River in the west, and approximately 20 miles wide from north to south. The region's elevation is its most distinguishing feature, averaging roughly 400 to 800 feet higher in elevation than the glaciated land immediately to the north or the Mississippi and Ohio River flood plains immediately to the south.

According to the petition, and the State of Illinois publications and maps submitted with it, the eastern boundary of the Shawnee Hills is the bluff line along the Ohio River, while its western boundary is the high bluff line above the Mississippi bottomland. The ''Natural Divisions and Biodiversity'' brochure notes that the Mt. Vernon Hill Country section of the Southern Till Plain division lies north of the Shawnee Hills. As noted in the petition and in the accompanying publications, the dividing line between the Shawnee and the Mt. Vernon Hill Country marks the southernmost advance of Ice Age glaciers. The area immediately to the south of the Shawnee Hills consists of the lowlands and flood plains found along the Ohio and Mississippi Rivers. This region, according to the petition, is commonly called the ''Cairo Delta.''

As proposed, the proposed Shawnee Hills viticultural area boundaries largely follow the natural boundaries of the Shawnee Hills landform. Differences between the ''natural'' boundaries of the Shawnee Hills region and the proposed Shawnee Hills viticultural area are minor and largely a matter of convenience, such as using a road at the base of the Mississippi River bluff rather than a complex meandering elevation line to mark a portion of the proposed area's western boundary. The proposed viticultural area also largely follows the boundaries of the Shawnee National Forest, which covers much of the Shawnee Hills region.

Distinguishing Features

Elevation

As noted by the petitioners and by Horrell, *et al.*, in ''Land Between the Rivers,'' elevation is the most obvious feature distinguishing the Shawnee Hills from surrounding areas. As shown on the ''Paducah; Kentucky: Illinois-Missouri-Indiana'' USGS map (1987) submitted with the petition, the Shawnee Hills range from 400 to 800 feet higher in elevation than the glaciated land to the north and the river delta land to the south. Most of the highest elevations in Illinois, many above 1,000 feet, are in the Shawnee Hills.

According to the petition, spectacular hills and ridges and a unique mesoclimate characterize the proposed Shawnee Hills viticultural area. Nearly all vineyards in the proposed Shawnee Hills viticultural area are on ridge tops and bench lands ranging between 600 and 900 feet in elevation. As such, the commercial vineyards in the Shawnee Hills area have experienced little or no spring frost or winter freeze injury. An additional benefit of the Shawnee Hills topography, the petition notes, is the enhanced air circulation caused by constant summer breezes, allowing faster drying of vineyard leaves and fruit clusters following rain, thus minimizing the risk of fungal infections in an otherwise humid, wet climate.

In contrast, the Mt. Vernon Hill County region immediately to the north of the Shawnee Hills was glaciated, and, as a result, is 400 to 500 feet lower in elevation than the Shawnee Hills. The Mt. Vernon region also is relatively flatter with no high ridges, cliffs, or canyons. Horrell, *et al.*, describe the topography of the Mt. Vernon Hill Country as ''rolling farmland.''

The Cairo Delta area to the south of the Shawnee Hills is lower still, averaging about 300 to 400 feet in elevation, with an extremely flat topography that is often totally flooded by the Cache, Ohio, Wabash, and Mississippi Rivers, which all converge there. This area comprises all of the land in Illinois south of the Shawnee Hills. Horrell, *et al.* (1973), describe this area as follows:

> Beyond Shawneetown Ridge the land drops away in gentle foothills to the low-lying swamps and lakes along the Cache River—the ancient bed of the Ohio River. Beyond Cache valley you come to the flood plain of the Ohio River itself. Two similar flood plains border Southern Illinois on the east and west, forming the banks of the Wabash and Mississippi rivers.

Geology

The petitioners also note that the geological characteristics of the Shawnee Hills are a distinguishing feature. The ''Illinois Geological Survey,'' compiled by H.B. William, *et al.* (1967), as cited in the petition, notes that the backbone of the Shawnee Hills is the Shawneetown Ridge, a high ridge of Pennsylvanian, Caseyville Formation Battery Rock sandstone up to 600 feet

thick, which runs east to west from the Ohio River south of Shawneetown to the Mississippi River near Chester. This rock is very obvious in the ridge's south-facing bluffs, as well as along the north-south roads cut through it. The ridge's northern slope consists primarily of Pennsylvania, Abbott Formation, Grindstaff sandstone up to 350 feet thick. The southern slope consists primarily of Mississippian Upper Chesterian, Grove Church shale up to 65 feet thick, and Kinkaid Limestone, which is 110 to 180 feet thick. The bluffs above the Mississippi River consist primarily of Lower Devonian Clear Creek chert and Backbone limestone.

This underlying mixture of sandstone, chert, and limestone gives the Shawnee Hills a Karst-like topography, honeycombed with sinkholes and limestone caves feeding many surface springs. One of the few such areas in Illinois, the petition notes that this combination of steep slopes, rock fissures, sink holes, and caves provides the proposed viticultural area with superior surface and ground water drainage in a region that often has excessive rainfall (38 to 46 inches annually).

In contrast, the petition notes, the Mt. Vernon Hill Country to the north of the Shawnee Hills was totally glaciated, resulting in much lower elevation, flatter topography, and a very different geology. The southern portion of the Mt. Vernon Hill Country consists primarily of Pennsylvanian, Spoon Formation, Curlew limestone layered with DeKoren and Davis coal, as well as Carbondale Formation, Piasa limestone with number 2, 5, and 6 coal. The northern part of the Mt. Vernon Hill Country area consists primarily of Modesto Formation Shoal Creek limestone 200 to 500 feet thick with number 7 and 8 coal throughout, as well as Bond Formation, Millersville limestone 100 to 350 thick. Horrell, *et al.* (1973), describe this area as ''a great crescent stretching southeast from Randolph and Perry counties to Gallatin county, where coal beds come so close to the surface that they have made this the most heavily mined region in the state.''

Also in contrast, the Cairo Delta area south of the Shawnee Hills was not flattened by ice but by water from both glacial melt and the tremendous flow and flooding of the two largest rivers in the country—the Mississippi and the Ohio Rivers, which eroded and replaced rock with clay, sand, and gravel. According to the ''Illinois State Geological Survey,'' the northern part of the delta area consists of Cretaceous, Gulfian McNary sand and Tuscaloesa gravel. The southern part of this area consists of Paleocene and Eocene Wilcox Formation, Porters Creek clay 75 to 150 feet thick.

Climate

Another distinguishing factor of the proposed Shawnee Hills viticultural area, according to the petitioners, is its climate. While the Shawnee Hills area generally has a continental climate, as does all of the Midwestern United States, the hills climatically separate the upper Midwest from the South. As a result, the Shawnee Hills region is a unique grape-growing area that is significantly cooler than adjacent areas to the south, which are often too hot in the summer to grow quality grapes. The Shawnee Hills area is also significantly warmer than adjacent areas to the north. This provides a longer growing season for ripening late varieties of grapes, higher degree-days for optimum ripeness, and fewer winter occurrences of below-zero degree Fahrenheit temperatures, which can kill buds and damage wood on many grape varieties.

As evidence of this unique climate, the petition included data from the Midwestern Climate Center (*http://mcc.sws.uiuc.edu/summary*) for Mt. Vernon, Anna, and Cairo, Illinois. Anna is located within the proposed Shawnee Hills viticultural area, Mt. Vernon, which is within the Mt. Vernon Hill Country region, is approximately 50 miles north of Anna, while Cairo, which is within the Cairo Delta region, is approximately 35 miles south of Anna.

The table shown below, which the petitioners provided, compares Shawnee Hills, Mt. Vernon, and Cairo temperature data. The table shows that the Shawnee Hills could be classified as a mid-Region IV climate in the Winkler heat summation climate classification system, with 3,770 growing degree-days. (During the growing season, one degree day accumulates for each degree Fahrenheit that a day's average temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.)

HEAT SUMMATION AS DEGREE-DAYS ABOVE 50 DEGREES FAHRENHEIT FOR THE PERIOD APRIL 15 TO OCTOBER 15

Climate station	Degree days over 50 °F								Winkler climate region
	Apr. 15–30	May	June	July	Aug.	Sept.	Oct. 1–15	Apr. 15–Oct. 15	
Mt. Vernon	108	447	706	835	774	550	123	3,543	Low Region IV.
Anna	127	498	733	868	815	587	142	3,770	Mid Region IV.
Cairo	159	586	823	950	872	643	168	4,201	Low Region V.

Source Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

For the Shawnee Hills area, the average temperatures are highest from mid-June to mid-August during verasion and early ripening; then the temperatures taper off in September and October, which is the period of late ripening and harvest. Typically, the area experiences warm days and cool nights from late August to October.

The table below, which the petitioners also provided, describes the length of growing season for the three areas (Mt. Vernon, Anna, and Cairo). For the Shawnee Hills, the median last spring frost occurs by April 10. In 10 percent of the years, the last frost occurred after April 23. North of this area, the median last spring frost occurs in mid-April, with 10 percent occurring after May 2. Since bud break generally occurs during the second week of April, areas to the north of the Shawnee Hills often experience more bud and shoot damage due to late frost. Also, since the first frost in the fall occurs one to three weeks later in the Shawnee Hills than in areas to the north, late varieties such as Chambourcin and Norton ripen more fully before leaf drop.

GROWING SEASON SUMMARY, 1961–1990

[Base Temperature = 32 Degrees Fahrenheit]

Station	Date of last spring frost occurrence			Date of first fall frost occurrence			Length of growing season		
	Median	90%	10%	Median	90%	10%	Median	90%	10%
Mt. Vernon	4/12	3/27	5/02	10/16	10/03	10/29	184	207	150
Anna	4/10	3/23	4/23	10/27	10/12	11/07	200	215	186
Cairo	3/24	3/01	4/08	11/13	10/31	11/28	233	260	214

Source Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

Because the Midwestern United States is a continental climate, one of the limiting factors in growing quality wine grapes is dormant wood and bud damage due to extreme cold temperatures in the winter. The next table, as provided by the petitioners, shows that the Shawnee Hills area averages 81 days below 30 degrees Fahrenheit and 1.8 days below 0 degrees Fahrenheit each year. The region immediately to the north averages 104 days below 30 degrees Fahrenheit and 3.5 days below 0 degrees Fahrenheit. One or two days of extreme cold can mean the difference between a full crop and healthy wood, and a partial crop and damaged wood.

AVERAGE ANNUAL TEMPERATURE VARIATION

[Averages: 1961–1990; Extremes: 1896–2000]

Station	Average annual temperature (degrees fahrenheit)			Annual number of days of minimum temperature	
	Maximum	Minimum	Mean	<32° F	<0° F
Mt. Vernon	65.0	42.9	54.0	104	3.5
Anna	67.1	46.1	56.6	81	1.8
Cairo	67.5	49.9	58.7	64	0.7

Source Midwest Climate Center Data: *http://mcc.sws.uiuc.edu/summary/data.*

Rainfall

The petitioners note that while rainfall does not appear to be a distinguishing feature for the proposed Shawnee Hills viticultural area, the area's drainage capacity does differ from that of surrounding areas.

Because of its well-drained soils, steep topography, and limestone base, the Shawnee Hills can shed excess water more quickly and completely than adjacent areas. In the Shawnee Hills area, most precipitation occurs in the spring months of March through May. The driest months are generally September and October, which receive an average of only 2 to 3 inches per month. Although the area receives excessive rainfall on an annual basis, the growing season and the harvest months are more moderate in terms of rainfall. The drier harvest months allow grapes to develop more intensity in flavor, color, sugar, and acid. In most years, the petition states, the Shawnee Hills vineyards produce wine grapes that are very well balanced relative to these quality parameters.

Soils

While noting that soils vary in the large Shawnee Hills area, which includes 11 counties, the petitioners offer a general description contrasting the soils of the proposed area with the soils of adjacent areas. As noted on the ''General Soil Map of Illinois,'' prepared by J.B. Fehrenbacher (1982), the soils in the proposed Shawnee Hills viticultural area are, generally, class XIII and class XIV, which tend to be thin loess with or without residuum on limestone or interbedded sandstone, siltstone, and shale. The main soils are Alford, Hosmer, Wellston, and Zanesville. All of these soils are light colored, moderately developed, and moderately well drained. The western and southern parts of the area tend to have deeper soils, 12 to 20 feet thick, on limestone. The central and northern parts of the area tend to have soil that is 20 to 48 inches thick on sandstone, siltstone, and shale. The primary viticultural advantage of the soils within the Shawnee Hills is that they are moderately well drained and are of low fertility.

Soil drainage in the Shawnee Hills area is moderate to excellent. In this area of Karst topography, the loess soils, which tend to erode easily, are very good for quality vines and grapes. However, the best vineyard sites within the proposed Shawnee Hills viticultural area are on flat ridge tops and bench lands with deep soils that are not highly eroded.

In contrast, the soil north of the Shawnee Hills in the Mt. Vernon Hill Country is class II, which is primarily thick loess (30 to 70 inches) on Illinois drift. The main soils are Stoy, Weir, Bluford, Wynoose, Colp, and Del Rey. These soils tend to be much deeper than those in the Shawnee Hills, as well as more fertile but with much poorer drainage. In general, these soils are more suited to growing such crops as corn and soybeans, which are the primary crops of the Mt. Vernon Hill Country, than to growing apples, peaches, and grapes, which are the primary crops in the Shawnee Hills area.

In contrast, the soils south of the Shawnee Hills in the Cairo Delta are primarily class XV, which are sandy to clay alluvial sediments on bottomlands. The soils include Lawson, Sawmill, Darwin, Haymond, Perrolia, and Karnak. These soils tend to be poorly developed and poorly drained. These bottomlands, which dominate this area, are not suitable for growing grapes, according to the petition.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioners provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Shawnee Hills,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''Shawnee Hills'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that ''Shawnee'' standing alone would have viticultural significance if the new area were established. We note in this regard that while searches of the Geographic Names Information System maintained by the U.S. Geological Survey show no entries for ''Shawnee Hills'' in Illinois, there are entries for ''Shawnee'' standing alone or in conjunction with words such as ''Creek,'' ''Lake,'' ''Peak,'' or ''Valley'' in 29 States. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Shawnee Hills'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Shawnee Hills'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Shawnee Hills viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climactic, boundary, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Shawnee Hills viticultural area on brand labels that include the words ''Shawnee Hills'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example by adopting a modified name for the viticultural area.

Although TTB believes that only the full name ''Shawnee Hills'' should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that ''Shawnee'' standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of ''Shawnee'' on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Shawnee Hills viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5 by 11 inch paper;

(2) Contain a legible, written signature; and

(3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5 by 11 inch paper.

- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Library at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5 x 11 inch page. Contact our librarian at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Library. To access the online

copies of this notice and the posted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

Rita Butler of the Regulations and Procedures Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

The Proposed Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter 1, part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9.__ to read as follows:

§ 9.__ Shawnee Hills.

(a) *Name.* The name of the viticultural area described in this section is ''Shawnee Hills''. For purposes of part 4 of this chapter, ''Shawnee Hills'' is a term of viticultural significance.

(b) *Approved Maps.* The United States Geological Survey (USGS) 1:250,000-scale topographic map used to determine the boundary of the Shawnee Hills viticultural area is titled: Paducah: Kentucky-Illinois, Missouri-Indiana, 1:250,000-scale metric topographic map, 1 x 2 degree quadrangle, edition 1987.

(c) *Boundary.* The Shawnee Hills viticultural area is located in southern Illinois between the Ohio and Mississippi Rivers, and largely within the Shawnee National Forest. The area's boundary is defined as follows—

(1) Beginning at the intersection of State Routes 3 and 150 in the town of Chester (Randolph County), proceed northeast on Route 150 to its intersection with the surveyed boundary line between Township 6 South (T6S) and Township 7 South (T7S); then

(2) Proceed due east along the T6S/T7S boundary line until it becomes the boundary between Perry and Jackson Counties, and continue east along the Perry/Jackson County line to State Route 4; then

(3) Proceed southeast on State Route 4 through the villages of Campbell Hill, Ava, and Oraville to its intersection with State Route 13/127; then

(4) Proceed south on State Route 13/127 to the intersection where State Routes 13 and 127 divide in the town of Murphysboro; then

(5) Proceed east on State Route 13 through the city of Carbondale to State Route 13's intersection with Interstate 57; then

(6) Proceed south on Interstate 57 to its intersection with State Route 148; then

(7) Proceed southeast on State Route 148 to its intersection with State Route 37; then

(8) Proceed south on State Highway 37 to Saline Creek; then

(9) Proceed northeasterly (downstream) along Saline Creek to its confluence with the South Fork of the Saline River, then continue easterly (downstream) along the South Fork of the Saline River to its confluence with the Saline River, then continue easterly and then southeasterly (downstream) along the Saline River to its confluence with the Ohio River near Saline Landing; then

(10) Proceed southwesterly (downstream) along the Ohio River to the Interstate 24 bridge; then

(11) Proceed north on Interstate 24 to its intersection with the New Columbia Ditch (with the towns of Big Bay to the northeast and New Columbia to the northwest); then

(12) Proceed westerly along the New Columbia Ditch to its confluence with the Main Ditch, and continue westerly along the Main Ditch to its confluence with the Cache River (near the Cache River's confluence with the Post Creek Cutoff), approximately 1.5 miles east-northeast of the village of Karnak; then

(13) Proceed westerly (downstream) along the Cache River, passing under Interstate 57 near the village of Ullin, and continue southeasterly along the Cache River to the river's confluence with Sandy Creek (northeast of the village of Sandusky); then

(14) Proceed westerly (upstream) along Sandy Creek approximately 4 miles to its junction with an unnamed secondary road (known locally as Alexander County Road 4); then

(15) Proceed south along the unnamed secondary road (Alexander County Road 4) to its junction with State Route 3 at the village of Olive Branch; then

(16) Proceed northwest on State Route 3 to its intersection with the Main Ditch (also known locally as Sexton Creek) at the village of Gale; then

(17) Proceed northerly along Main Ditch and Clear Creek Ditch to a light-duty road (known locally as State Forest Road) near the southwest corner of the Trail of Tears State Forest, approximately 3.75 miles east of the village of Wolf Lake; then

(18) Proceed west on the light-duty road (State Forest Road) to its intersection with State Route 3 just south of Wolf Lake; then

(19) Proceed north on State Route 3 to its junction with the Big Muddy River (near the village of Aldridge), and continue north (upstream) along the Big Muddy River to its confluence with Kincaid Creek near the village of Grimsby; then

(20) Continue northerly along Kincaid Creek to its junction with State Route 149; then

(21) Proceed west on State Route 149 to its junction with State Route 3, and then continue northwest along State Route 3 to the beginning point in the town of Chester.

Signed: March 31, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 05–6994 Filed 4–7–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 34, 42, and 52

[FAR Case 2004–019]

RIN 9000–AJ99

Federal Acquisition Regulation; Earned Value Management System (EVMS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement earned value management system (EVMS) policy. FAR coverage is essential to help standardize the use of EVMS across the Government. The proposed rule specifically impacts contracting officers, program managers, and contractors with earned value management systems.

DATES: Interested parties should submit comments in writing on or before June 7, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–019 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm.* Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–019@gsa.gov.* Include FAR case 2004–019 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004–019 in all correspondence related to this case.

All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAR case 2004–019.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR changes are necessary to implement EVMS requirements in OMB Circular A–11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide. Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90 percent of the cost, performance and schedule goals established. The Clinger-Cohen Act of 1996 requires the Director of OMB to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system. OMB Circular A–11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger-Cohen Act. OMB Circular A–11, Part 7, sets forth the policy, budget justification, and reporting requirements that apply to all agencies of the executive branch of the Government that are subject to executive branch review, for major capital acquisitions.

This rule establishes standard EVMS provisions, a standard clause and a set of guidelines for Governmentwide use. The guidelines include the requirement and timing of an Integrated Baseline Review (IBR), whether prior to or post award. Due to the time and cost of performing IBRs, when IBRs are conducted prior to award, consideration should be given to limiting the competitive range. The concept of conducting the IBR before the contract is awarded is a change from the traditional approach of conducting IBRs only after contract award. We specifically request comments on the feasibility of conducting IBRs before award. Should all contracts require IBRs before award? If not, on what type of contracts should IBRs be conducted before award? Would a modified IBR be a better choice before award? What should be the down-select policy to limit the number of offerors subject to an IBR before award?

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The proposed changes to FAR Parts 2, 7, 34, 42, and 52 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule requires contractors, and subcontractors identified by the contracting officer, to implement earned value management and set up earned value management systems within their organizations to plan and manage the work under major acquisitions. Thus, small businesses will be required to set up such systems if awarded a major acquisition contract or a large subcontract under a major acquisition. However, an analysis of data in the Federal Procurement Data System (FPDS) on actions and dollars on contracts above $20 million for supplies and equipments, IT services and construction, areas where EVMS is likely to be applied, indicated that small business only received 3.8 percent of the $36.8 billion and 5.8 percent of the 345 actions. Because FPDS does not collect data on EVMS use, the data above is only an approximation of the effect on small business. The Councils are seeking comments on the potential impact of having to implement a program management system that meets the EVMS guidelines in ANSI/EIA Standard 748–A.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The proposed FAR changes are necessary to implement earned value management systems (EVMS) requirements in OMB Circular A–11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the supplement to Part 7, the Capital Programming Guide. Currently, only DoD, NASA, and a few other agencies have developed EVMS clauses and policy. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are therefore proposing revising FAR Parts 2, 7, 34, 42, and 52 to include guidance for EVMS. This rule establishes standard EVMS provisions, a standard clause and a set of guidelines for Governmentwide use.

Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90 percent of the cost, performance and schedule goals established. The Clinger-Cohen Act of 1996 requires the Director of OMB to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system. OMB Circular A–11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger-Cohen Act. OMB Circular A–11, Part 7, sets forth the policy, budget justification, and reporting requirements that apply to all agencies of the executive branch of the Government that are subject to executive branch review, for major capital acquisitions. The proposed FAR changes are necessary to implement EVMS requirements in OMB Circular A–11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets, and the

supplement to Part 7, the Capital Programming Guide.

The impact to small businesses by this rule will be dependent upon the thresholds established by the agencies or identified by OMB as the agencies' major acquisitions/investments. OMB does not expect EVMS on acquisitions at or below $20 million total cost. However, OMB or the agency may identify a lower dollar acquisition as a major acquisition for application of EVMS. Therefore the impact for this rule has not been ascertained across all agencies. Small businesses may be impacted by their lack of certification of an EVM System at time of award or the cost of the requirement for an IBR prior to award where an agency does not absorb the cost of the IBR. Likewise, agencies will be affected by the possible cost of IBRs for which they absorb the costs. Therefore, the number of small businesses with EVM Systems is uncertain, based on current information.

This proposed FAR rule will not impose any additional reporting or recordkeeping requirements on offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The rule provides for the standardization of EVMS across the Government. Contractors are required to maintain EVMS, where applicable. These systems are unique to the contractor. The reporting is specific to the contractor's system and is not the reporting of identical information collected for a public collection. There is no set of identical questions for 10 or more contractors. The rule allows contractors to use a standardized EVMS across Government. The requirements for these systems are usually imposed on high dollar acquisitions. Therefore, only a few small entities would be required to comply with the cost/schedule/performance requirements for these systems.

There are no Federal rules that duplicate, overlap, or conflict with the proposed rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 7, 34, 42, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 34, 42, and 52

Government procurement.

Dated: April 1, 2005.

Rodney Lantier,

Director, Contract Policy Division, General Services Administration.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 34, 42, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 34, 42, and 52 are revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition ''Earned value management system'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Earned value management system means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of earned value management systems are described in American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard–748, Earned Value Management systems. (See OMB Circular A–11, Part 7.)

* * * * *

PART 7—ACQUISITION PLANS

3. Amend section 7.105 by adding a sentence to the end of paragraph (b)(10) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(10) * * * If an earned value management system is to be used, discuss the methodology the Government will employ to analyze and use the earned value data to assess and monitor contract performance. In addition, discuss how the offeror's/contractor's EVMS will be verified for compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) standard, and the timing and conduct of Integrated Baseline Reviews (whether prior to or post award). See 34.202.

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

4. Revise section 34.000 to read as follows:

34.000 Scope of part.

This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A–109; and the use of earned value management systems in acquisitions designated as major acquisitions consistent with OMB Circular A–11.

5. Amend section 34.005–2 by adding paragraph (b)(6) to read as follows:

34.005–2 Mission-oriented solicitation.

* * * * *

(b) * * *

(6) Require the use of an earned value management system that meets the guidelines of ANSI/EIA Standard–748 (current version at time of solicitation) (see 42.1106) for earned value management systems and reporting requirements).

* * * * *

6. Add subpart 34.X to read as follows:

Subpart 34.X—Earned Value Management Systems

Sec.

34.X01 Policy.

34.X02 Integrated Baseline Reviews.

34.X03 Solicitation provisions and contract clause.

34.X01 Policy.

(a) Earned value management system (EVMS) is required in acquisitions designated, in accordance with agency procedures, as major acquisitions subject to OMB Circular A–11.

(b) When EVMS is required, the agency shall consider the use of an Integrated Baseline Review (IBR).

34.X02 Integrated Baseline Reviews.

(a) The Integrated Baseline Review (IBR) is meant to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in offerors'/contractors' performance plans and the underlying management control systems, and it should formulate a plan to handle these risks.

(b) The IBR is a joint assessment by the offeror or contractor, and the Government, of the—

(1) Ability of the project's technical plan to achieve the objectives of the scope of work;

(2) Adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives;

(3) Ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work;

(4) Availability of personnel, facilities, and equipment when required, to perform the defined tasks needed to execute the program successfully; and

(5) The degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control.

(c) Conduct the IBR in accordance with agency procedures.

34.X03 Solicitation provisions and contract clause.

(a) The contracting officer shall insert a provision that is substantially the same as the provision at 52.234–X1, Notice of Earned Value Management System, in solicitations for contracts that require the contractor to use an earned value management system (EVMS) and for which the Government may require an Integrated Baseline Review (IBR) after contract award. When an offeror is required to provide an EVMS plan as part of its proposal, the contracting officer shall forward a copy of the plan to the cognizant Administrative Contracting Officer (ACO) or responsible Federal department or agency and obtain their assistance in determining the adequacy of the proposed EVMS plan.

(b) The contracting officer shall insert a provision that is substantially the same as the provision at 52.234–X2, Notice of Earned Value Management System-Pre-Award IBR, in solicitations for contracts that require the contractor to use an EVMS and for which the Government will require an IBR prior to contract award. When an offeror is required to provide an EVMS plan as part of its proposal, the contracting officer shall forward a copy of the plan to the cognizant ACO or responsible Federal department or agency and obtain their assistance in determining the adequacy of the proposed EVMS plan.

(c) The contracting officer shall insert a clause that is substantially the same as the clause at 52.234–X3, Earned Value Management System, in solicitations and contracts that require a contractor to use an earned value management system (EVMS).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

7. Amend section 42.1106 by adding paragraph (d) to read as follows:

42.1106 Reporting requirements.

* * * * *

(d) For major acquisitions contracting officers shall require contractors to submit earned value management system monthly reports (*see* subpart 34.2 and OMB Circular A–11, part 7, section 1H4, Exhibit 300).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Add sections 52.234–X1, 52.234–X2, and 52.234–X3 to read as follows:

52.234–X1 Notice of Earned Value Management System.

As prescribed in 34.X03(a) use the following provision:

Notice of Earned Value Management System (Date)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency has recognized that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard–748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

52.234–X2 Notice of Earned Value Management System—Pre-Award IBR.

As prescribed in 34.X03(b), use the following provision:

Notice of Earned Value Management System, Pre-Award IBR (Date)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency has recognized that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard–748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government and the Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

52.234–X3 Earned Value Management System.

As prescribed in 34.X03(c), insert the following clause:

Earned Value Management System (Date)

(a) In the performance of this contract the Contractor shall use an earned value management system (EVMS) to manage the contract that at the time of contract award has been recognized by the cognizant Administrative Contracting Officer (ACO) or a Federal department or agency as compliant with the guidelines in ANSI/EIA Standard–748 (current version at time of award) and the Contractor will submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO or a Federal department or agency as complying with EVMS guidelines (or the Contractor does not have an existing cost/schedule control system that is

compliant with the guidelines in ANSI/EIA Standard–748 (current version at time of award)), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS guidelines referenced in paragraph (a) of this clause.

(c) Agencies may conduct Integrated Baseline Reviews (IBR). If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award, but not later than 180 days after award. The Contracting Officer may also require an IBR at (1) exercise of significant options or (2) incorporation of major modifications. Such reviews will normally be scheduled before award of the contract action.

(d) Unless a waiver is granted by the ACO or Federal department or agency, Contractor proposed EVMS changes require approval of the ACO or Federal department or agency, prior to implementation. The ACO or Federal department or agency, shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO or Federal department or agency, the Contractor shall disclose EVMS changes to the ACO or Federal department or agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: [*Insert list of applicable subcontractors.*]

(End of clause)

[FR Doc. 05–6864 Filed 4–7–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 041029298–5084–02; I.D. 052004A]

RIN 0648–AS38

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee System for Fishing Capacity Reduction Loan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS re-proposes regulations to implement an industry fee system for repaying a $35,662,471 Federal loan. The loan financed most of the cost of a fishing capacity reduction program in the Pacific Coast groundfish fishery. The industry fee system imposes fees on the value of future groundfish landed in the trawl portion (excluding whiting catcher-processors) of the Pacific Coast groundfish fishery. It also imposes fees on coastal Dungeness crab and pink shrimp landed in the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp. This action's intent is to implement the industry fee system.

DATES: Written comments on this proposed rule must be received by May 9, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *0648–AS38@noaa.gov*. Include in the subject line the following identifier: Pacific Coast Groundfish Buyback RIN 0648–AS38. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.
- Fax: (301) 713–1306.

Comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Michael L. Grable, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of the Environmental Assessment, Regulatory Impact Review (EA/RIR) and Initial Regulatory Flexibility Analysis (IRFA) for the fee collection system may be obtained from Michael L. Grable, at the above address.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) (Magnuson-Stevens Act) generally authorized fishing capacity reduction programs. In particular, section 312(d) of the Magnuson-Stevens Act authorized industry fee systems for repaying fishing capacity reduction loans which finance program costs.

Subpart L of 50 CFR part 600 contains the framework regulations (framework regulations) generally implementing sections 312(b)–(e) of the Magnuson-Stevens Act.

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g), generally authorized fishing capacity reduction loans.

Section 212 of Division B, Title II, of Public Law 108–7 (section 212) specifically authorized a $46 million program (groundfish program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, were endorsed for trawl gear operation (reduction fishery). Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fisheries for California, Washington, and Oregon coastal Dungeness crab and pink shrimp (fee-share fisheries). Section 501(c) of Division N, Title V, of Public Law 108–7 (section 501(c)) appropriated $10 million to partially fund the groundfish program's cost. Public Law 107–206 authorized a reduction loan with a ceiling of $36 million to finance the groundfish program's cost.

Section 212 required NMFS to implement the groundfish program by a public notice in the **Federal Register**. NMFS published the groundfish program's initial public notice on May 28, 2003 (68 FR 31653) and final notice on July 18, 2003 (68 FR 42613). Background information on the groundfish program are published in these notices.

The groundfish program's maximum cost was $46 million, of which $10 million was funded by an appropriation and $36 million by a reduction loan. Voluntary participants in the groundfish program relinquished, among other things, their fishing permits in the reduction fishery, their fishing permits or licenses in the fee- share fisheries, their fish catch histories in both the reduction and fee-share fisheries, and their vessels' worldwide fishing privileges. These relinquishments were in return for reduction payments whose amounts the participants' reduction bids determined.

On July 18, 2003, NMFS invited reduction bids from the reduction fishery's permit holders. The bidding period opened on August 4, 2003, and closed on August 29, 2003. NMFS scored each bid's amount against the bidder's past ex-vessel revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues. This created reduction contracts whose performance was subject only to a successful referendum about the fee system required to repay the reduction loan.

Bid offers totaled $59,786,471. NMFS accepted bids totaling $45,662,471. The next lowest scoring bid would have exceeded the groundfish program's maximum cost. The accepted bids involved 91 fishing vessels as well as 239 fishing permits and licenses (91 in the reduction fishery, 121 in the fee-share fisheries, and 27 other Federal permits).

In accordance with the section 212 formula, NMFS allocated portions of the $35,662,471 reduction loan amount to the reduction fishery and to each of the six fee share fisheries, as follows:

1. Reduction fishery, $28,428,719; and

2. Fee-share fisheries:

a. California coastal Dungeness crab fishery, $2,334,334;

b. California pink shrimp fishery, $674,202;

c. Oregon coastal Dungeness crab fishery, $1,367,545;

d. Oregon pink shrimp fishery, $2,228,845;

e. Washington coastal Dungeness crab fishery, $369,426; and

f. Washington pink shrimp fishery, $259,400.

Each of these portions became reduction loan subamounts repayable by fees from each of the seven subamount fisheries involved.

NMFS next held a referendum on the fee system. The reduction contracts would have become void unless the majority of votes cast in the referendum approved the fee system. On September 30, 2003, NMFS mailed ballots to referendum voters in the reduction fishery and in each of the six fee-share fisheries. The voting period opened on October 15, 2003, and closed on October 29, 2003. NMFS received 1,105 responsive votes. In accordance with the section 212 formula, NMFS weighted the votes from each of the seven fisheries. Over 85 percent of the weighted votes approved the fee system. This successful referendum result removed the only condition precedent to reduction contract performance.

On November 4, 2003, NMFS published another **Federal Register** document (68 FR 62435) advising the public that NMFS would, beginning on December 4, 2003, tender the groundfish program's reduction payments to the 91 accepted bidders. On December 4, 2003, NMFS required all accepted bidders to permanently stop all further fishing with the reduction vessels and permits. Subsequently, NMFS:

1. Disbursed $45,662,471 in reduction payments to 91 accepted bidders;

2. Revoked the relinquished Federal permits;

3. Advised California, Oregon, and Washington about the relinquished state permits or licenses;

4. Arranged with the National Vessel Documentation Center for revocation of the reduction vessels' fishery trade endorsements; and

5. Notified the U.S. Maritime Administration to restrict placement of the reduction vessels under foreign registry or their operation under the authority of foreign countries.

On November 16, 2004, NMFS published a **Federal Register** document (69 FR 67100) proposing regulations to implement an industry fee system for repaying the reduction loan (proposed fee regulations).

Due to the extensive changes requested by the public on the original proposed fee regulations, NMFS modified and is now re-proposing the fee system.

II. Summary of Comments and Responses

Comment 1: One comment stated that the term ''reduction fishery'' as defined in the proposed fee regulations may be ambiguous. This comment noted that the reduction fishery fleet may fish, under both a limited entry trip limit and an open access trip limit, for all groundfish species. The comment asked if the fee applies to all reduction fishery landings regardless of whether the landed fish were caught under the limited entry trip limit or the open access trip limit.

Response: The fee applies to all groundfish species in the reduction fishery regardless of the nature of the trip limits under which the species were caught.

Under the proposed fee regulations' definition of ''reduction fishery'', the reduction fishery species are ''all species in... the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.''

The fee must be paid for all species which are:

1. Reduction fishery species;

2. Caught under permits which are endorsed for trawl gear operation (except permits registered to whiting catcher-processors); and,

3. Caught by limited access permit holders, regardless of whether species are caught under limited access or open access permits.

Comment 2: One comment concerned the proposed fee regulations' failure to exercise a section 212 option under which the States of California, Oregon, and Washington would have ''collected'' the fees. The proposed fee regulations partly based this on some of the states' authority to ''collect'' these fees expiring in a few years while fee collection itself will continue for 30 years. The commenter believed this was insufficient justification for not exercising this option because state statutory provisions are commonly extended beyond their ''sunset'' period if the provisions are still being used.

Response: NMFS continues to believe that exercising the statutory option for the states to ''collect'' the fees is not feasible. NMFS reached this conclusion because, among other reasons:

1. The state systems sometimes:

a. Assess and collect fees based on pounds rather than on dollars,

b. Do not assess or collect fees at the point of fish sale, and/or

c. Involve quarterly fee disbursements;

2. One state's legislation regarding this option authorizes participation of a state agency different from the one administering the existing state system (and might require amendment);

3. One state's legislation regarding this option expires in less than two years;

4. All states indicated that the funding and staffing required for this option during the reduction loan's 30-year term would be problematic for them; and

5. The states' collection systems are dissimilar and, without significant modification, might not promote

efficient and uniform groundfish program fee collection.

Comment 3: One comment stated that interest should not have accrued on reduction loan principal between the time of the loan's disbursement and the industry fee system's implementation because the fish sellers had no opportunity to pay the fee during this interim. The commenter stated that NMFS' Financial Services Division had verbally advised him that the interest would not accrue during this interim period.

Response: The Financial Services Division neither advised nor had the authority to advise this commenter that the interest would not accrue during this interim period.

Comment 4: One comment suggested that NMFS use the state vessel identification number as the identifier to track vessels delivering fee fish to ensure the proper fees are being collected.

Response: NMFS does not now propose any particular means of identifying or tracking vessels delivering fee fish. NMFS will use whatever available vessel identifiers best allow, in the circumstances involved, NMFS to match fish sellers with fish buyers and, where necessary, audit fee payments, collection, deposits, and disbursements.

Comment 5: One comment requested NMFS to annually notify all fish sellers and fish buyers of the fee rate applicable to the reduction fishery and to each of the fee-share fisheries during the succeeding year.

Response: NMFS does not believe annual notifications are necessary. Instead, in accordance with the framework regulations' section 600.1013(d), NMFS will, at least 30 days before the effective date of any fee or of any fee rate change, publish a **Federal Register** document establishing the date from and after which the fee or fee rate change is effective. NMFS will at the same time and by U.S. mail also individually notify each affected fish seller and fish buyer of whom NMFS has notice.

Comment 6: One comment questioned the requirement for each fish buyer to maintain a segregated account for the sole purpose of depositing and disbursing collected fee revenue.

Response: Because the groundfish program will involve many smaller fish buyers and because the amount of fees each collects will often be relatively smaller than in other fishing capacity reduction programs, NMFS has modified the proposed rule to remove the requirement to maintain a segregated account, as long as they maintain separate subaccounts for these fees within operating accounts which may also be used for other purposes. The subaccounts must include provision to separately account for fees collected as a result of fish bought from the reduction fishery and/or from each of the fee-share fisheries. NMFS now proposes to require all groundfish program fish buyers to establish and maintain accounting policies which will allow NMFS, where necessary, to accurately audit their fee collection, deposit, and disbursement activities.

Comment 7: One comment stated that the requirement for collected fee revenue to be deposited weekly would be burdensome and instead suggested monthly deposits as an alternative.

Response: Because the fee amounts which groundfish program fish buyers collect will often be relatively smaller than in other fishing capacity reduction programs, NMFS agrees with this comment and now proposes monthly, rather than weekly, fee deposits.

Comment 8: One comment requested that fish buyers be permitted to disburse collected fees to NMFS up to 14 days after the end of each month rather than being required to do so on the last business day of each month.

Response: Because so many smaller fee collections will be involved, NMFS agrees with this comment and now proposes to permit disbursement up to 14 days after the end of each month rather than on the last business day of each month. Moreover, to further reduce the fee disbursement burden on small fish buyers, NMFS now also proposes not to require any disbursement to NMFS of deposited fees until either the deposited fees total at least $100 or the 14th day after the end of the calendar year in which the fees were deposited, whichever comes first.

Comment 9: One comment stated that annual reporting is not needed, since monthly settlement sheets are required that provide the same information.

Response: NMFS agrees with this comment and now proposes to dispense with annual reporting. NMFS, however, will monitor this and if subsequent experience demonstrates a need to revise this requirement, NMFS shall do so.

Comment 10: To prevent delays in NMFS' internal mail system, one comment requested that NMFS establish a separate post office box for receiving fee deposits and reports.

Response: This is unnecessary because the proposed fee regulations require fish buyers to send collected fees and reports to a special lockbox which NMFS will establish for this sole purpose. A separate lockbox will prevent these remittances from being intermixed with any other materials.

III. Proposed Regulations

NMFS has completed the groundfish program except for the implementation of a fee system, which this action proposes to implement.

The terms defined in section 600.1000 of the framework regulations apply to the groundfish program except for the definitions for ''borrower'' and ''fee fish.'' The definition for these two terms have been refined to account for fee share fisheries. The proposed refined definitions are found in section 600.1102. If this rule is adopted, the new definitions would, for purposes of the groundfish program, supersede the definition for these terms found in section 600.1000.

Section 600.1013 of the framework regulations govern the payment and collection of fees under a fee system for any program.

Under section 600.1013, the first ex-vessel buyers (fish buyers) of post-reduction fish subject to a fee system (fee fish) must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties (fish sellers) who harvested and first sold the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value, including all in-kind compensation or other goods or services exchanged in lieu of cash.

Fish buyers collect the fee when they withhold it from trip proceeds, and fish sellers pay the fee when the fish buyers withhold it. Fee payment and fee collection is mandatory, and there are substantial penalties for failing to pay and collect fees in accordance with the applicable regulations.

The framework regulations' section 600.1014 governs fish buyers' depositing and disbursing to NMFS the fees which they have collected for any program as well as their keeping records of, and reporting about, collected fees. Paragraph (j) of section 600.1014 also provides that regulations implementing specific program may vary the section 600.1014 provisions if NMFS believes this is necessary to accommodate the circumstances of, and practices in, a specific reduction fishery.

Under section 600.1014(a)-(d), fish buyers must, no less frequently than at the end of each business week, deposit collected fees in segregated and Federally insured accounts until, no less frequently than on the last business day of each month, they disburse all collected fees in the accounts to a

lockbox which NMFS has specified for this purpose. Settlement sheets must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least three years and send NMFS annual reports of fee collection and disbursement activities.

After evaluating comments received in response to the proposed fee regulations, however, NMFS now proposes in the instance of the groundfish program to depart from some of the section 600.1014 provisions, chiefly:

1. Segregated bank accounts will not be required for depositing collected fees;

2. Collected fee deposits will be monthly rather than weekly;

3. Fish buyers may disburse deposited fees up to 14 days after the end of each month rather than having to do so on the last business day of each month;

4. Fish buyers do not have to disburse deposited fees at all until either their total reaches $100 or the 14th day after the end of each calendar year, whichever comes first; and

5. Fish buyers do not have to submit annual fee collection, deposit, and disbursement reports.

Accordingly, the proposed fee regulations now restate, for the groundfish program, the entirety of the framework regulations' at section 600.1014(a)-(d). NMFS also proposes that section 600.1014(e) of the framework regulations no longer applies to the groundfish program. Additionally, NMFS proposes that sections 600.1014(f)-(j) will continue to apply, in their entirety, to the groundfish program.

All parties interested in this proposed action should carefully read the following framework regulations sections, whose detailed provisions, as this action proposes to modify them, apply to the fee system for repaying the groundfish program's reduction loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. Applicable portions of § 600.1017.

Section 212 provides an option for NMFS to enter into agreements with California, Washington, and Oregon regarding groundfish program fees in the fee-share fisheries. While this would not involve actual fee collection (because both section 312(d) of the Magnuson-Stevens Act and the framework regulations require fish buyers to collect the fee), it would allow fish buyers to use existing state systems for post-collection fee administration.

After all three states enacted legislation which would have allowed them to function in this capacity, NMFS evaluated the feasibility of exercising the section 212 option. As previously noted, however, NMFS concluded that exercising this option was not feasible. NMFS reached this conclusion because, among other reasons:

1. The state systems sometimes:

a. Assess and collect fees based on pounds rather than on dollars,

b. Do not assess or collect fees at the point of fish sale, and/or

c. Involve quarterly fee disbursements;

2. One state's legislation regarding this option authorizes participation of a state agency different from the one administering the existing state system (and might require amendment);

3. One state's legislation regarding this option expires in less than two years;

4. All states indicated that the funding and staffing required for this option during the reduction loan's 30-year term would be problematic for them; and

5. The states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

Accordingly, NMFS decided that the section 212 option is not feasible at this time and will not propose to exercise this option.

NMFS intends to enter into landing and permit data sharing agreements with the States of California, Oregon, and Washington in order for NMFS to receive landing and permit information. This will allow NMFS to ensure full groundfish program fee payment, collection, deposit, and disbursement under the framework rule provisions.

NMFS proposes, in accordance with the framework regulations' section 600.1013(d), to establish the initial fee applicable to the reduction fishery and to each fee-share fishery. After NMFS has adopted a final rule, NMFS will separately mail notification to each individual fish seller and fish buyer affected of whom NMFS then has notice. Until implementation of the final rule, fish sellers and fish buyers do not have to either pay or collect the groundfish program fee. Upon implementation of the final rule, the initial fee rate for the reduction fishery and for each of the fee-share fisheries would be:

1. Reduction fishery, 5 percent; and

2. Fee share fisheries:

a. California coastal Dungeness crab, 1.24 percent,

b. California pink shrimp, 5 percent,

c. Oregon coastal Dungeness crab, 0.55 percent,

d. Oregon pink shrimp, 3.75 percent,

e. Washington coastal Dungeness crab, 0.16 percent, and

f. Washington pink shrimp, 1.50 percent.

The rates are percentages of delivery value. See section 600.1000 of the framework regulations for the definition of ''delivery value'' and for the definition of other terms relevant to the proposed fee regulation.

Each disbursement of the $35,662,471 principal amount of the reduction loan began accruing interest as of the date of each such disbursement. The interest rate is a fixed 6.97 percent, and will not change during the term of the reduction loan.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an EA for the final notice implementing the groundfish program. The EA discussed the impact of the groundfish program on the natural and human environment and resulted in a finding of no significant impact. The EA considered the implementation of this fee collection system, among other alternatives. Therefore, this proposed action has received a categorical exclusion from additional analysis. NMFS will provide a copy of the EA upon request (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared an RIR for the final notice implementing the groundfish program. NMFS will provide a copy of the RIR upon request (see **ADDRESSES**).

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act, that describes the impact this proposed rule, if adopted, would have on small entities. NMFS will provide a copy of the IRFA upon request (see **ADDRESSES**). A summary of the IRFA follows:

1. Description of Reasons for Action and Statement of Objective and Legal Basis

Section 212 authorized a $46 million fishing capacity reduction program for reduction fishery. Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fee share fisheries.

Section 501(c) appropriated $10 million to partially fund the groundfish program's cost. Public Law 107–206

authorized a reduction loan for financing up to $36 million of the groundfish program's cost. Pursuant to section 212, NMFS implemented the groundfish program, except for a fee system, on July 18, 2003 (68 FR 42613). This action now proposes a fee system for the groundfish program.

2. Description of Small Entities to Which the Rule Applies

The Small Business Administration (SBA) has defined any fish harvesting businesses that is independently owned and operated, not dominant in its field of operation, and with annual receipts of $3.5 million or less, as a small entity. In addition, processors with 500 or fewer employees involved in related industries such as canned and cured fish and seafood or prepared fresh fish and seafood are also considered small entities. According to the SBA's definition of a small entity, virtually all of the groundfish program's approximate 1,800 fish sellers are small entities. This includes 172 fish sellers in the reduction fishery and over 1,600 fish sellers in the six fee-share fisheries. Most of the groundfish program's fish buyers also are small entities.

3. Description of Recordkeeping and Compliance Costs

Please see collection-of-information requirements listed hereafter.

4. Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules.

5. Description of Significant Alternatives Considered

NMFS considered three alternatives to the proposed action. The first alternative was the status quo. Under this alternative, there would be no fee system and the fish sellers and fish buyers would not have to pay and collect a fee. This alternative was, however, contrary to the groundfish program's statutory authority and was rejected.

The second alternative was the statutorily mandated industry fee system without state involvement. Under this alternative, the fish buyers of fee fish would withhold the fee from the trip proceeds. Fish buyers would calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. This is the preferred alternative because the groundfish program's statutory authority mandates fee payment and collection.

The third alternative was the statutorily mandated industry fee system with state involvement. This alternative is the same as described in the second alternative except that the States of California, Oregon, and Washington would, in conjunction with their own state tax and fee systems, assume some of the fish buyers' fee deposit and disbursement responsibilities. This alternative would have reduced compliance costs to individual businesses, both fish buyers and sellers. However, this alternative was not chosen because some states:

1. Assess and collect the state taxes and fees based on pounds rather than on dollars,

2. Do not assess or collect their taxes or fees at the point of fish sale, and

3. Involve quarterly fee disbursements.

In addition, one state's legislative authority to participate in this alternative collection authorizes participation of a state agency different than the one administering the existing state system and another state's legislative authority to participate in this alternative expires in less than two years (even though fee collection continues for 30 years).

Furthermore, all states indicated that state funding and staffing under this alternative for the reduction loan's 30-year term would be problematic for them.

Finally, the states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

6. Steps the Agency Has Taken to Mitigate Negative Effects of the Action

NMFS has changed aspects of the framework regulations' fee deposit and disbursement requirements to reduce the impact on small entity fish buyers. NMFS proposes to require monthly fee deposits as opposed to the weekly deposits previously required. NMFS also will allow a 14 day grace period from the end of each month for fish buyers to disburse deposit fee principal to NMFS. If the deposit fee principal totals less than $100, the fish buyers need not disburse the deposit fee principal until it totals $100 or more, or until the 14th day after the end of the calendar year in which the fees were deposited, whichever comes first. Furthermore, NMFS proposes to eliminate annual reporting requirements.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average:

Two hours for submitting a monthly fish buyer settlement sheet; and

Two hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the requirements of the PRA unless that information collection displays a currently valid OMB control number.

NMFS has determined that this proposed rule will not significantly affect the coastal zone of any state with an approved coastal zone management program. This determination was submitted for review by the States of Washington, Oregon, and California.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs business, Reporting and recordkeeping requirements.

Dated: April 5, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. An authority citation for part 600 subpart M is added to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, section 205 of Pub. L. 107–117, Pub. L. 107–206, and Pub. L. 108–7.

2. In § 600.1102 the section heading is revised and text is added to read as follows:

§ 600.1102 Pacific Coast Groundfish Fee.

(a) *Purpose.* This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish

Program authorized by section 212 of Division B, Title II, of Public Law 108–7 and implemented by a final notification in the **Federal Register** (July 18, 2003; 68 FR 42613).

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee share fisheries, or in both the reduction fishery and any or all of the fee share fisheries.

Deposit fee principal means all collected fee revenue that a fish buyer has deposited in the account required by paragraph (j)(1) of this section.

Fee fish means all fish legally harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee share fisheries during the period in which any portion of each fee share fishery's subamount is outstanding.

Fee-share fisheries means the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp.

Fee-share fishery subaccount means each of the six subaccounts of the groundfish program fund subaccount in which each of the six fee-share fishery subamounts are accounted for.

Reduction fishery subaccount means the subaccount of the groundfish program fund subaccount in which the reduction fishery subamount is accounted for.

Subamount means each portion of the reduction loan's original principal amount which is allocated to the reduction fishery and to each of the fee share fisheries.

(c) *Reduction fishery.* The reduction fishery for the groundfish program includes all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

(d) *Reduction loan amount.* The reduction loan's original principal amount is $35,662,471.

(e) *Subamounts.* The subamounts of the reduction loan amount are:

(1) Reduction fishery, $28,428,719; and

(2) Fee-share fisheries:

(i) California coastal Dungeness crab fee-share fishery, $2,334,334,

(ii) California pink shrimp fee-share fishery, $674,202,

(iii) Oregon coastal Dungeness crab fee-share fishery, $1,367,545,

(iv) Oregon pink shrimp fee-share fishery, $2,228,845,

(v) Washington coastal Dungeness crab fee-share fishery, $369,426, and

(vi) Washington pink shrimp fee-share fishery, $259,400.

(f) *Interest accrual inception.* Interest began accruing on each portion of the reduction loan amount on and from the date each such portion was disbursed.

(g) *Interest rate.* The reduction loan's interest rate is 6.97 percent. This is a fixed rate of interest for the full term of the reduction loan's life.

(h) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(i) *Reduction loan repayment.* The borrower shall repay the reduction loan in accordance with § 600.1012.

(j) *Fee payment and collection.* (1) Fish sellers in the reduction fishery and in each of the fee-share fisheries shall pay the fee applicable to each such fishery's subamount in accordance with § 600.1013.

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall collect the fee applicable to each such fishery in accordance with § 600.1013.

(k) *Fee collection, deposits, disbursements, records, and reports.* Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1014, except that:

(1) *Deposit accounts.* Each fish buyer that this section requires to collect a fee shall maintain an account at a federally insured financial institution for the purpose of depositing collected fee revenue and disbursing the deposit fee principal directly to NMFS in accordance with paragraph (k)(3) of this section. The fish buyer may use this account for other operational purposes as well, but the fish buyer shall ensure that the account separately accounts for all deposit fee principal collected from the reduction fishery and from each of the six fee-share fisheries. The fish buyer shall separately account for all fee collections as follows:

(i) All fee collections from the reduction fishery shall be accounted for in a reduction fishery subaccount,

(ii) All fee collections from the California pink shrimp fee-share fishery shall be accounted for in a California shrimp fee-share fishery subaccount,

(iii) All fee collections from the California coastal Dungeness crab fishery shall be accounted for in a California crab fee-share fishery subaccount,

(iv) All fee collections from the Oregon pink shrimp fee-share fishery shall be accounted for in an Oregon shrimp fee-share fishery subaccount,

(v) All fee collections from the Oregon coastal Dungeness crab fee-share fishery shall be accounted for in an Oregon crab fee-share fishery subaccount,

(vi) All fee collections from the Washington pink shrimp fee-share fishery shall be accounted for in a Washington shrimp fee-share fishery subaccount, and

(vii) All fee collections from the Washington coastal Dungeness crab fishery shall be accounted for in a Washington crab fee-share fishery subaccount;

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (k)(1) of this section, all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit fee principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the fund in accordance with paragraph (k)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit fee principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;

(3) *Deposit fee principal disbursement.* Not later than the 14th calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit fee principal then in the deposit account, provided that the deposit fee principal then totals $100 or more. If the deposit fee principal then totals less than $100, the fish buyer need not disburse the deposit fee principal until either the next month during which the deposit fee principal then totals $100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit fee principal has not since the last required disbursement totaled $100 or more, whichever comes first. The fish buyer shall disburse deposit fee principal by check made payable to the

groundfish program fund subaccount. The fish buyer shall mail each such check to the groundfish program fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program fund subaccount lockbox and the manner and form of settlement sheet. NMFS will do this by means of the notification in § 600.1013(d). NMFS' settlement sheet instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least three years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller include:

(A) The date of delivery,

(B) The fish seller's identity,

(C) The weight, number, or volume of each species of fee fish delivered,

(D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,

(E) The delivery value of each species of fee fish,

(F) The net delivery value of each species of fee fish,

(G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,

(H) The date the net delivery value was paid,

(I) The total fee amount collected as a result of all fee fish, and

(J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and

(ii) For all collected fee deposits to, and disbursements of deposit fee principle from, the deposit account include:

(A) The date of each deposit,

(B) The total amount deposited,

(C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,

(D) The date of each disbursement to the Fund's lockbox,

(E) The total amount disbursed,

(F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and

(G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and

(5) *Annual report.* No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under § 600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

(l) *Other provisions.* The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through applicable portions of § 600.1017, except § 600.1014(e).

[FR Doc. 05–7063 Filed 4–7–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 67
Friday, April 8, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5 and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218.4 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals and Litigation Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404–347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR parts 215 and 217. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions:
- *Montgomery Advertiser*, published daily in Montgomery, AL

District Ranger Decisions:
- Bankhead Ranger District: *Northwest Alabamian,* published bi-weekly (Wednesday & Saturday) in Haleyville, AL
- Conecuh Ranger District: *The Andalusia Star News,* published daily (Tuesday through Saturday) in Andalusia, AL
- Oakmulgee Ranger District: *The Tuscaloosa News,* published daily in Tuscaloosa, AL
- Shoal Creek Ranger District: *The Anniston Star,* published daily in Anniston, AL
- Talladega Ranger District, *The Daily Home,* published daily in Talladega, AL
- Tuskegee Ranger District: *Tuskegee News,* published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:
- *El Nuevo Dia,* published daily in Spanish in San Juan, PR
- *San Juan Star,* published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions:
- *The Times,* published daily in Gainesville, GA

District Ranger Decisions:
- Armuchee Ranger District: *Walker County Messenger,* published bi-weekly (Wednesday & Friday) in LaFayette, GA
- Brasstown Ranger District: *North Georgia News,* (newspaper of record) published weekly (Wednesday) in Blairsville, GA

Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA
Chattooga Ranger District: *Northeast Georgian*, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA
Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA
White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA
The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, Ga
Cohutta Ranger District: *Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA
Oconee Ranger District: *Eatonton Messenger*, published weekly (Thursday) in Eatonton, GA
Tallulah Ranger District: *Clayton Tribune*, published weekly (Thursday) in Clayton, GA
Toccoa Ranger District: *The News Observer*, (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions:
Knoxville News Sentinel, published daily in Knoxville, TN
District Ranger Decisions:
Nolichucky-Unaka Ranger District: *Greeneville Sun*, published daily (except Sunday) in Greeneville, TN
Ocoee-Hiwassee Ranger District: *Polk County News*, published weekly (Wednesday) in Benton, TN
Tellico Ranger District: *Monroe County Advocate*, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN
Watauga Ranger District: *Johnson City Press*, published daily in Johnson City, TN

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions:
Lexington Herald-Leader, published daily in Lexington, KY
District Ranger Decisions:
London Ranger District: *The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY
Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY
Redbird Ranger District: *Manchester Enterprise*, published weekly (Thursday) in Manchester, KY
Somerset Ranger District: *Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY
Stanton Ranger District: *The Clay City Times*, published weekly (Thursday) in Stanton, KY
Stearns Ranger District: *McCreary County Record*, published weekly (Tuesday) in Whitley City, KY

National Forests in Florida, Florida

Forest Supervisor Decisions:
The Tallahassee Democrat, published daily in Tallahassee, FL
District Ranger Decisions:
Apalachicola Ranger District: *Calhoun-Liberty Journal*, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: *The Ocala Star Banner*, published daily in Ocala, FL
Osceola Ranger District: *The Lake City Reporter*, published daily (Monday-Saturday) in Lake City, FL
Seminole Ranger District: *The Daily Commercial*, published daily in Leesburg, FL
Wakulla Ranger District: *The Tallahassee Democrat*, published daily in Tallahassee, FL

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions:
The State, published daily in Columbia, SC
District Ranger Decisions:
Andrew Pickens Ranger District: *The Daily Journal*, published daily (Tuesday through Saturday) in Seneca, SC
Enoree Ranger District: *Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC
Long Cane Ranger District: *The State*, published daily in Columbia, SC
Wambaw Ranger District: *Post and Courier*, published daily in Charleston, SC
Witherbee Ranger District: *Post and Courier*, published daily in Charleston, SC

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions:
Roanoke Times, published daily in Roanoke, VA
District Ranger Decisions:
Clinch Ranger District: *Coalfield Progress*, published bi-weekly (Tuesday and Thursday) in Norton, VA
Deerfield Ranger District: *Daily News Leader*, published daily in Staunton, VA
Dry River Ranger District: *Daily News Record*, published daily (except Sunday) in Harrisonburg, VA
Glenwood-Pedlar Ranger District: *Roanoke Times*, published daily in Roanoke, VA
James River Ranger District: *Virginian Review*, published daily (except Sunday) in Covington, VA
Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA
Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA
New Castle Ranger District: *Roanoke Times,* published daily in Roanoke, VA
New River Ranger District: *Roanoke Times,* published daily in Roanoke, VA
Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions:
The Town Talk, published daily in Alexandria, LA
District Ranger Decisions:
Calcasieu Ranger District: *The Town Talk,* (newspaper of record) published daily in Alexandria, LA
The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA
Caney Ranger District: *Minden Press Herald,* (newspaper of record) published daily in Minden, LA
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, La
Catahoula Ranger District: *The Town Talk,* published daily in Alexandria, LA
Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA
Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA

Land Between The Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions:
The Paducah Sun, published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions:
Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions:
Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
De Soto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS
Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions:
The Ashville Citizen-Times, published daily in Ashville, NC
District Ranger Decisions:
Appalachian Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC
Cheoah Ranger District: *Graham Star.* published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: *The Sun Journal,* published daily (except Saturday) in New Bern, NC
Grandfather Ranger District: *McDowell News,* published daily in Marion, NC
Highlands Ranger District: *The Highlander,* published weekly (mid May–mid Nov Tuesday & Fri; mid Nov–mid May Tues only) in Highlands, NC
Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, Nc
Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: *Montgomery Herald,* published weekly (Wednesday) in Troy, NC
Wayah Ranger District: *The Franklin Press,* published bi-weekly (Tuesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions:
Arkansas Democrat-Gazette, published daily in Little Rock, AR
District Ranger Decisions:
Caddo-Womble Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Jessieville-Winona-Fourche Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Mena-Oden Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) *Tulsa World,* published daily in Tulsa, OK
Poteau-Cold Springs Ranger District: *Arkansas Democrat-Gazette,* published daily in Little Rock, AR

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions:
The Courier, published daily (Tuesday through Sunday) in Russellville, AR
District Ranger Decisions
Bayou Ranger District: *The Courier,* published daily (Tuesday through Sunday) in Russellville, AR
Boston Mountain Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
Buffalo Ranger District: *Newton County Times,* published weekly in Jasper, AR
Magazine Ranger District: *Southwest Times Record,* published daily in Fort Smith, AR
Pleasant Hill Ranger District: *Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR
St. Francis National Forest: *The Daily World,* published daily (Sunday through Friday) in Helena, AR
Sylamore Ranger District: *Stone County Leader,* published weekly (Wednesday) in Mountain View, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions:
The Lufkin Daily News, published daily in Lufkin, TX
District Ranger Decisions:
Angelina National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Caddo & LBJ National Grasslands: *Denton Record-Chronicle,* published daily in Denton, TX
Davy Crockett National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sabine National Forest: *The Lufkin Daily News,* published daily in Lufkin, TX
Sam Houston National Forest: *The Courier,* published daily in Conroe, TX

Dated: April 4, 2005.

Thomas A. Peterson,

Acting Deputy Regional Forester, Natural Resources.

[FR Doc. 05–7070 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caney Recreation Facilities Development

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: *Authority:* The Forest Service is requesting this Revised Notice Of Intent be published pursuant to the Council on Environmental Quality implementing regulations of the National Environmental Policy Act at 40 CFR 1501.7.

Need for Revision: On September 29, 2003, the Daniel Boone National Forest published a notice of intent to prepare an environmental impact statement in the **Federal Register** (Vol. 68, No. 188, pages 55934–55935). The Project was entitled ''Development of Boat Ramp and Associated Structures at Caney Creek.'' The project included a proposal for development of a boat ramp, comfort station, access road, and associated infrastructure in the Caney Creek drainage on Cave Run Lake. Due to public input for the proposal, the Forest Service decided to revise the proposal and prepare an environmental impact statement that includes all reasonably foreseeable future developments at the Caney Site. The Caney Recreation Facilities Development proposal represents an expansion of the earlier proposal.

Proposed Action: The Forest Service is proposing to allow construction of a boat ramp, lodge, cabins and marina within the area identified in the original recreational development plans for Cave Run Lake. Also included in the proposal will be an amendment to the Forest Plan.

Decision to be Made: The Forest Supervisor will be the official responsible for making a decision on whether to allow development of recreational facilities and infrastructure in the Caney Site Project Area. If the Forest Supervisor determines that development is warranted, he will decide which facilities will be developed, where they will be located and where infrastructure will be located. He will decide which mitigation measures and monitoring requirements to include with the project. Finally, the Forest Supervisor will determine whether the Forest Land and Resource Management Plan will need to be amended.

The Army Corps of Engineers (ACOE) will have a related decision concerning

this project. The Responsible Official for the ACOE will decide whether or not to approve use of ACOE land for access to the proposed area.

Scoping Process: Project descriptions were mailed to more than 90 individuals and groups on April 2, 2005.

Date Comments Are Due: Comments concerning the scope of this analysis should be received by May 31, 2005.

Lead Agency: USDA Forest Service, Daniel Boone National Forest.

Cooperating Agency: Army Corps of Engineers, Louisville District.

Responsible Officials: The Forest Supervisor for the Daniel Boone National Forest, located at 1700 Bypass Road, Winchester, KY 40391, is the responsible official for this proposed action for the Forest Service. The Commander and District Engineer for the Louisville District at PO Box 59, Louisville Kentucky 40201 is the responsible official for this proposed action for the Army Corps of Engineers.

SUPPLEMENTARY INFORMATION:

Send Comments to: Written comments can be mailed to: Morehead District Ranger, Daniel Boone National Forest, Attn: Caney Recreation Facilities Development, 2375 KY 801 South, Morehead, Kentucky 40351. Written comments can be sent by facsimile to: (606) 784–6435. Electronic comments should include the title line ''Caney Recreation Facilities Development'' and be in a common digital format and sent to: *comments-southern-daniel-boone-morehead@fs.fed.us.*

Oral or hand-delivered comments must be provided at the District Ranger's office during normal business hours. Normal business hours for the Marched District Office in Morehead Kentucky are from 8 a.m. to 4:30 p.m. (M–F). For submitting oral comments by telephone, call (606) 784–6428 and identify the purpose of your call. The receptionist will connect you with someone who will document your comments.

FOR FURTHER INFORMATION CONTACT: Julia Waller-Eling at the Daniel Boone National Forest, Morehead Ranger District, 2375 KY 801 S., Morehead KY 40351; by phone at (859) 784–6428; or by e-mail at *jeling@fs.fed.us.*

Need for the Proposal: The need for this facility was identified in 1968 in the Cave Run Composite Recreation Plan and was reaffirmed in 1985 and 2004 in the Land and Resource Management Plans for the Daniel Boone National Forest. This development would provide a type of visitor accommodation currently unavailable at Cave Run Lake, provide additional marina space (existing marinas on the Lake are at current capacity), help to ease crowding at other boat ramps in the northern portion of the lake and provide better launching conditions for sailboats. Over the last several years, local governments and various publics have expressed renewed interest in developing facilities at Cave Run Lake. In 2003 and 2004, federal earmark money was given to the Daniel Boone NF specifically for analyzing the development of facilities at the Caney Site and complete planning for such facilities.

Purpose of the Proposal: The purpose of this project is to meet the above needs of the public and the land at the Caney Site. The 2004 Forest Plan contains direction for recreation projects based on research of recreation use tends and current and future demand. Goal 7 of the Plan is to ''Provide a sustainable mix of desired uses, valued characteristics, and service to improve the long-term benefit to local communities and the public.'' Objective 7.0.A is to ''Provide an opportunity for development of a lodge at Cave Run Lake.''

Additionally, USFS 2000 Strategic Plan directs the agency to work with communities and manage recreation areas and programs on NFS lands to levels compatible with ecosystem substainability objectives by:

—Working with communities to help determine recreation opportunities and priorities.
—Redirecting opportunities and use.
—Improving management of facilities and special places.

Preliminary Issues: The following are preliminary issues related to this proposal:

The development of facilities, access roads, and infrastructure has the potential to alter the hydrology of several stream head wetland seeps in the area, potentially causing damaging impacts to the plant communities present.

The construction of a marina or boat ramp in a previously development cove of the lake has the potential to change the use patterns of the area potentially increasing user conflict and displacing existing types of use and users from the area.

Permits or Licenses Required: The Forest Service will need a realty permit from the Army Corps of Engineers to allow use of ACOE land for infrastructure related to this proposal.

Estimated Dates for DEIS and FEIS: The DEIS is expected to be filed with the Environmental Protection Agency and to be available for public review and comment by March 2006. At that time, the Environmental Protection Agency (EPA) will publish a Notice of Availability (NOA) of the DEIS in the Federal Register. The comment period on the DEIS will be a minimum of 45 days from the date the EPA publishes the NOA in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978)*). Also environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can be meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the FEIS. The FEIS is scheduled for completion in September 2006. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in

making a decision regarding this proposed action.

The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision may be subject to appeal in accordance with 36 CFR Part 215.

Dated: March 28, 2005.

Benjamin T. Worthington,

Forest Supervisor, Daniel Boone National Forest.

[FR Doc. 05–7036 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Brush Creek Project, Elk and Forest Counties, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Reference is made to our notice of intent to prepare an environmental impact statement for the Brush Creek Project (FR Document 99–5430 filed 3/4/99) published in the **Federal Register**, Volume 64, No. 43, Friday, March 5, 1999, pages 10618–19 and (FR Document 03–5253 filed 3/6/03) published in the **Federal Register**, Volume 68, No. 45, Friday, March 7, 2003, pages 11033–35.

In accordance with Forest Service Environmental Policy and Procedures handbook 1909.15, part 21.2—*Revision of Notices of Intent,* we are revising the date that the Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review and comment to November 30, 2005. Subsequently, the date the final EIS is scheduled to be completed is revised to be May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Kevin Treese, Marienville Ranger District, HC 2, Box 130, Marienville, PA 16239 or by telephone at 814 927–6628.

Dated: March 18, 2005.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 05–6993 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hoosier National Forest, Forest Plan Revision Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of Meetings.

SUMMARY: The Hoosier National Forest will be holding three public meetings to provide information and clarification on the Draft Environmental Impact Statement and Proposed Land and Resource Management Plan.

DATES: Meetings will be held:

1. May 10, 2005, 5:30 p.m. to 8:30 p.m., at the Morgan County Fairgrounds in Martinsville, Indiana.

2. May 11, 2005, 5:30 p.m. to 8:30 p.m., Community Center at the Orange County Fairgrounds, in Paoli, Indiana.

3. May 12, 2005, 5:30 p.m. to 8:30 p.m., Fulton Hill Community Center, Troy, Indiana.

ADDRESSES: Morgan County Fairgrounds, P.O. Box 1534, Martinsville, Indiana, Orange County Fairgrounds, 1075 N. Sandy Hook Road, Paoli, Indiana, Fulton Hill Community Center, 855 Walnut Street, Troy, Indiana.

FOR FURTHER INFORMATION CONTACT: Judi Perez, Forest Planner, Hoosier National Forest, 811 Constitution Avenue, Bedford, Indiana 47421, (812) 275–5987.

SUPPLEMENTARY INFORMATION: The meetings are intended to provide information and answer questions in order to help you develop written comments regarding the DEIS. Attendees are encouraged to review the DEIS prior to the meetings in order to make the greatest use of the time available. The meetings are not intended to be formal hearings or forums for public comment. All meeting locations are accessible to persons with disabilities. If accommodations are needed, please contact the Hoosier National Forest at (812) 275–5987 before May 6, 2005. Please contact the Hoosier National Forest at the number above for directions or maps to meeting locations.

Dated: March 29, 2005.

Kenneth G. Day,

Forest Supervisor.

[FR Doc. 05–7032 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) has scheduled two upcoming meetings at the Snohomish County Administration Building, 3000 Rockefeller Ave., Everett, Wa. 98201. The first meeting will be Tuesday, April 26, 2005 in the Willis Tucker Conference Room, 3rd floor, beginning at 9 a.m. and ending about 4 p.m. The second meeting, if needed, will be Tuesday, May 3, 2005 in the Willis Tucker Conference Room, 3rd floor, beginning at 10 a.m. and ending about 4 p.m.

The agenda items to be covered are Background on the Secure Rural Schools and Community Self-Determination Act of 2000, the orientation of new members and the review and recommendation of Title II projects for FY 2006.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews projects proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carryout the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920 NE. Stevens Pass Hwy, P.O. Box 305, Skykomish, WA 98288 (phone: 425–744–3351).

Dated: April 4, 2005.

Barbara Busse,

Designated Federal Official.

[FR Doc. 05–6998 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We are deposting 21 stockyards. These facilities can no longer be used as stockyards and, therefore, are no longer required to be posted.

EFFECTIVE DATE: April 8, 2005.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers

and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

We depost a stockyard when the facility can no longer be used as a stockyard. Some of the reasons a facility can no longer be used as a stockyard include: the facility has been moved and the posted facility is abandoned, the facility has been torn down or otherwise destroyed, such as by fire, the facility is dilapidated beyond repair, or the facility has been converted and its function changed.

This document notifies the public that the following 21 stockyards no longer meet the definition of stockyard and that we are deposting the facilities.

Facility No.	Stockyard name and location	Date posted
CA–102	Atwater Livestock Auction, Atwater, California	October 1, 1959.
IL–107	Kankakee Livestock Company, Bourbonnais, Illinois	November 17, 1959.
IL–134	St. Louis National Stock Yards, National Stockyards, Illinois	November 1, 1921.
IL–146	Pittsfield Community Sale, Pittsfield, Illinois	November 17, 1959.
IL–172	Vienna Livestock, Vienna, Illinois	April 6, 1990.
KY–100	Twin Lakes Livestock Auction, Incorporated, Albany, Kentucky	December 9, 1959.
KY–101	Jolley's Feeder Pig Auction, Albany, Kentucky	May 8, 1968.
KY–154	Tompkinsville Livestock Auction, Inc., Tompkinsville, Kentucky	December 10, 1959.
KY–164	Walton Stockyards, Inc., Walton, Kentucky	August 22, 1979.
MI–130	Owosso Livestock Sales Company, Owosso, Michigan	April 22, 1959.
MN–107	Canby Livestock Auction, Canby, Minnesota	March 17,1960.
MN–116	Fergus Falls Livestock Exchange, Inc., Fergus Falls, Minnesota	November 12, 1959.
MN–146	Northern States Cattle and Hay Exchange, Inc., Sauk Centre, Minnesota.	September 15, 1959.
MN–162	Southwestern Minnesota Livestock Sales Pavilion, Worthington, Minnesota.	September 15, 1959.
MT–111	Kalispell Livestock Auction, Kalispell, Montana	December 13, 1965.
OH–106	Western Ohio Livestock Exchange, Celina, Ohio	June 10, 1959.
SC–135	Martin & Martin Cattle, Inc., Anderson, South Carolina	October 17, 1983.
WI–106	Equity Livestock Auction Market, Dodgeville, Wisconsin	October 24, 1961.
WI–107	Equity Livestock Auction Market, Ettrick, Wisconsin	April 14, 1971.
WI–122	Equity Livestock Auction Market, Ripon, Wisconsin	May 15, 1959.
WI–133	Equity Livestock Auction Market, Beetown, Wisconsin	February 4, 1976.

Effective Date

This notice is effective upon publication in the **Federal Register** because it relieves a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

David Orr,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 05–7015 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Weather Radio Transmitter Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: This notice provides an updated listing of proposed NOAA Weather Radio transmitter sites eligible for funding under the Weather Radio Transmitter Grant Program. The agency is not soliciting applications for the program at this time. This site listing updates and consolidates the three previous site listings published April 4, 2001, October 16, 2001, and December 24, 2002, in the **Federal Register**.

Further details on the program and eligibility are available in the NOFA in the April 4, 2001, **Federal Register** (66 FR 17857) or on the RUS Web site at *http://www.usda.gov/rus/telecom/initiatives/weatherradio.htm*.

Also available on the RUS Web site is a list of the approved grant applications.

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: On April 4, 2001, the Rural Utilities Service (RUS) published a Notice of Funds Availability (NOFA) in the **Federal Register** (66 FR 17857) announcing a new grant program, and the availability of grant funds under this program, to finance the installation of new transmitters to extend the coverage of the National Oceanic and Atmospheric Administration's Weather Radio system (NOAA Weather Radio) in rural America. Included in the NOFA was a listing of proposed NOAA Weather Radio transmitter sites that would be eligible for funding. The NOFA also stated that RUS would continue to update its list from time to time and would publish updates in the **Federal Register**.

On October 16, 2001, RUS published an updated site listing in the **Federal Register** (66 FR 52571) and notified the public that they could apply for a grant under the program for a site included in the April 4, 2001, or the October 16, 2001, site listings. On December 24, 2002, RUS published an additional updated site listing in the **Federal Register** (67 FR 78412) and notified the public that they could apply for a grant under the program for a site included in any of the three site listings published in the **Federal Register**.

Updated Site Listing

An area's need for a new NOAA Weather Radio transmitter is determined by its inherent risk of hazardous weather and the absence of adequate coverage by an existing transmitter. RUS, in consultation with the National Weather Service, has developed the attached listing of proposed transmitter sites.

Dated: April 1, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

BILLING CODE 3410–15–P

NWR SITE LISTING

State and Site Name	County Name	FIPS	Latitude	Longitude
ALABAMA				
ROCKFORD	COOSA	01037	32-55-06N	86-16-04W
ALASKA				
COLD BAY	ALEUTIANS EAST	02013	55-11-05N	162-43-23W
NAKNEK	BRISTOL BAY	02060	58-43-17N	157-01-00W
TURNAGAIN ARM	KENAI PENINSULA	02122	60-59-30N	149-48-20W
OLD HARBOR	KODIAK ISLAND	02150	57-12-02N	153-19-02W
TALKEETNA	MATANUSKA-SUSITNA	02170	60-20-01N	150-05-08W
DENALI	MATANUSKA-SUSITNA BOROUGH	02170	63-09-78N	147-23-01W
GAMBELL	NOME	02180	63-46-43N	171-44-14W
KOYUK	NOME	02180	64-55-52N	161-09-33W
SHAKTOOLIK	NOME	02180	64-19-59N	161-09-22W
SHISHMAREF	NOME	02180	66-14-51N	166-05-37W
ST. MICHAELS	NOME	02180	63-28-38N	162-02-30W
WAINWRIGHT	NOME	02180	70-38-11N	160-02-30W
WALES / TELLER	NOME	02180	65-15-46N	166-21-48W
NUIQSUT	NORTH SLOPE	02185	70-12-35N	151-00-28W
POINT HOPE	NORTH SLOPE	02185	68-20-49N	166-38-49W
PRUDHOE	NORTH SLOPE	02185	70-13-01N	148-20-53W
AMBLER	NORTHWEST ARCTIC	02188	67-05-07N	157-51-15W
KIANA	NORTHWEST ARCTIC	02188	66-58-28N	160-25-29W
SHUNGNAK	NORTHWEST ARCTIC	02188	66-53-15N	157-08-21W
HYDER	PRINCE OF WALES-OUTER KETCHIKAN	02201	55-55-13N	130-01-13W
ANGOON	SKAGWAY-HOONAH-ANGOON	02232	57-29-34N	134-25-39W
CAPE SPENCER	SKAGWAY-HOONAH-ANGOON	02232	58-12-34N	136-39-12W
GUSTAVUS	SKAGWAY-HOONAH-ANGOON	02232	58-24-40N	135-45-29W
TOK	SOUTHEAST FAIRBANKS	02240	63-18-47N	143-00-29W
CAPE YAKATAGA	VALDEZ-CORDOVA	02261	60-04-23N	149-29-55W
GLEN ALLEN	VALDEZ-CORDOVA	02261	62-06-33N	149-59-50W
EMMONAK	WADE HAMPTON	02270	62-46-36N	164-31-30W
MARSHALL	WADE HAMPTON	02270	61-52-37N	162-05-00W
SCAMMON BAY	WADE HAMPTON	02270	61-50-31N	165-35-02W
ST MARY'S	WADE HAMPTON	02270	62-05-40N	163-40-59W
KAKE	WRANGELL-PETERSBURG	02280	56-28-24N	133-56-55W
MUD BAY	WRANGELL-PETERSBURG	02280	57-09-06N	135-38-46W
PETERSBURG	WRANGELL-PETERSBURG	02280	56-48-01N	132-57-03W
YAKUTAT HIGH SITE	YAKUTAT	02282	59-32-48N	139-43-45W
ANDERSON	YUKON-KOYUKUK	02290	64-20-37N	149-11-21W
ANVIK	YUKON-KOYUKUK	02290	62-39-19N	160-12-33W
BIRCH CREEK	YUKON-KOYUKUK	02290	66-15-56N	145-49-18W
FORT YUKON	YUKON-KOYUKUK	02290	66-33-52N	145-16-34W
GALENA	YUKON-KOYUKUK	02290	64-44-07N	156-55-40W
GRAYLING	YUKON-KOYUKUK	02290	62-53-37N	160-04-01W
KOYUKUK	YUKON-KOYUKUK	02290	64-52-46N	157-42-12W
NENANA	YUKON-KOYUKUK	02290	64-31-50N	149-05-44W
AMERICAN SAMOA				
ARIZONA				
APACHE (N OF CHINLE)	APACHE	04001	35-23-01N	109-29-18W
DRAGOON PEAK	COCH	04003	32-00-05N	109-59-18W
PAYSON	GILA	04007	34-13-51N	111-19-23W
GREENLEE COUNTY	GREENLEE	04011	33-11-06N	109-13-59W
PARKER	LA PAZ	04012	33-43-08N	113-32-02W
BEAVER DAM [or MESQUITE,NV]	MOHAVE	04015	36-53-55N	113-56-02W
COLORADO CITY	MOHAVE	04015	36-59-24N	112-58-32W
MOHAVE	MOHAVE	04015	34-29-02N	114-19-18W
KYKOTSMOVI	NAVAJO	04017	36-11-54N	109-32-14W
PIMA	PIMA	04019	32-06-14N	111-48-53W
YUMA COUNTY	YUMA	04027	32-45-06N	114-00-18W
ARKANSAS				
MAGNOLIA	COLUMBIA	05027	33-15-33N	93-14-00W
BRINKLEY / FOREST CITY	MONROE / ST. FRANCIS	05095	34-53-16N	91-11-40W

CALIFORNIA				
YOSEMITE	CALAVERAS	06009	37-44-43N	119-35-50W
REDWOOD SP	DEL NORTE	06015	41-45-58N	124-02-48W
HORSE MOUNTAIN	HUMBOLDT	06023	40-39-03N	123-51-04W
BISHOP	INYO	06027	37-22-30N	118-23-00W
DEATH VALLEY	INYO	06027	36-16-19N	116-31-12W
INDEPENDENCE / NEW YORK BUTTE	INYO	06027	36-48-09N	118-12-00W
SILVER PEAK	INYO	06027	36-08-42N	117-42-12W
LAKEPORT	LAKE	06033	39-06-06N	122-44-04W
SUSANVILLE	LASSEN	06035	40-24-59N	120-39-07W
MOUNT WILLSON (SPANISH)	LOS ANGELES	06037	34-09-09N	118-12-01W
MT WILLSON (MARINE)	LOS ANGELES	06037	34-09-09N	118-12-01W
LAYTONVILLE	MENDOCINO	06045	40-40-04N	123-02-07W
MAMMOTH	MODOC	06049	41-43-50N	121-21-14W
BIG SUR	MONTEREY	06053	36-16-13N	121-49-10W
BRIDGEPORT	NEVADA	06057	39-17-30N	121-11-41W
LAKE ELSINORE	ORANGE	06059	33-38-05N	117-49-01W
PORTOLA MT	PLUMAS	06063	40-01-10N	120-44-30W
QUINCY	PLUMAS	06063	40-00-54N	119-06-43W
CALICO PEAK	SAN BERNADINO	06071	34-29-03N	116-00-07W
CUESIA PEAK (MARINE)	SAN LOIS OBISPO	06079	34-09-09N	118-12-01W
CAMBRIA	SAN LUIS OBISPO	06079	35-33-50N	121-04-50W
MT UMUNHUM	SANTA CLARA	06085	37-16-01N	121-16-08W
MT. SHASTA	SISKIYOU	06093	41-18-36N	122-18-58W
TRINITY	TRINITY	06105	40-35-00N	123-10-00W
WEAVERVILLE	TRINITY	06105	40-40-04N	123-02-07W
MOUNT PINOS	VENTURA	06111	34-48-46N	119-08-43W
OJAI	VENTURA	06111	34-20-09N	119-03-04W
COLORADO				
PAGOSA SPRINGS	ARCHULETA	08007	37-16-10N	107-00-33W
SALIDA	CHAFFEE	08015	38-32-05N	105-59-54W
CHEYENNE WELLS	CHEYENNE	08017	38-49-00N	103-31-20W
EISENHOWER TUNNEL	CLEAR CREEK	08019	39-40-59N	105-55-08W
EAGLE	EAGLE	08037	39-39-19N	106-49-41W
CANON CITY	FREMONT	08043	38-24-00N	105-13-00W
IDAHOE SPRINGS	GILPIN	08047	39-52-14N	105-29-00W
HOT SULPHUR	GRAND	08049	40-04-23N	106-06-08W
GUNNISON	GUNNISON	08051	38-32-45N	106-55-29W
WALDEN	JACKSON	08057	40-43-54N	106-15-59W
LEADVILLE	LAKE	08065	39-15-03N	106-17-31W
ESTES PARK	LARIMER	08069	40-21-00N	105-29-54W
TRINIDAD	LAS ANIMAS	08071	37-20-01N	103-58-07W
LIMON / BOYERO	LINCOLN	08073	39-15-50N	103-41-30W
CRAIG	MOFFAT	08081	40-30-55N	107-32-45W
CORTEZ	MONTEZUMA	08083	37-28-26N	108-30-14W
NUCLA	MONTROSE	08085	38-29-14N	107-54-17W
HARTSEL	PARK	08093	39-01-18N	105-47-43W
HOLYOKE	PHILLIPS	08095	40-38-00N	102-24-00W
ASPEN	PITKIN	08097	39-11-28N	106-49-01W
MEEKER	RIO BLANCO	08103	40-02-15N	107-54-45W
RANGELY	RIO BLANCO	08103	40-08-50N	109-59-07W
STEAMBOAT SPRINGS	ROUTT	08107	40-31-07N	106-53-03W
CONNECTICUT				
FLORIDA				
CALHOUN	CALHOUN	12013	30-24-09N	85-10-08W
PALMDALE	GLADES	12043	26-57-09N	81-05-07W
GEORGIA				
HAWAII				
KANEOHE	HONOLULU	15003	19-35-04N	155-30-09W
HANALEI	KAUAI	15007	22-12-19N	159-30-10W
N.E. KAUAI	KAUAI	15007	22-06-00N	159-31-07W
KAANAPALI	MAUI	15009	20-47-06N	156-19-20W
LAHAINA	MAUI	15009	20-52-42N	156-40-57W

IDAHO				
SUN VALLEY	BLAINE	16013	43-41-50N	114-21-03W
SAND POINT	BONNER	16017	48-16-36N	116-33-08W
ISLAND PARK	FREMONT	16043	44-14-07N	111-28-50W
SALMON	LEMHI	16059	45-10-33N	113-53-42W
SODA SPRINGS	ONEIDA	16071	42-15-00N	112-26-20W
KELLOGG	SHOSHONE	16079	47-32-18N	116-07-06W
DRIGGS	TETON	16081	43-43-23N	111-06-32W
WASHINGTON CITY	WASHINGTON	16087	43-53-32N	115-47-27W
ILLINOIS				
INDIANA				
MUNCIE	DELAWARE	18035	40-11-37N	85-23-08W
BROOKEVILLE	FRANKLIN	18047	39-24-17N	85-03-14W
ROCHESTER	FULTON	18049	40-45-08N	86-45-00W
KOKOMA	HOWARD	18067	40-28-42N	086-09-42W
SPENCER / COAL CITY	OWEN	18119	39-17-12N	86-45-45W
IOWA				
FENTON	KOSSUTH	19109	43-11-55N	94-29-34W
WESLEY	KOSSUTH	19109	45-05-20N	93-59-22W
KANSAS				
FT SCOTT	BOURBON	20011	37-51-00N	94-42-09W
LAWRENCE	DOUGLAS	20045	38-51-12N	095-05-06W
MOUND CITY	LINN	20107	38-13-01N	94-49-01W
KENTUCKY				
LOUISIANA				
OAKDALE	ALLEN	22003	30-48-59N	92-39-39W
BIENVILLE	BIENVILLE	22013	32-21-40N	92-58-38W
VILLE PLATTE	EVANGELINE	22039	30-41-14N	092-16-40W
OAK GROVE	WEST CARROLL	22123	36-46-00N	91-27-20W
MAINE				
OXFORD COUNTY	OXFORD	23017	44-07-54N	70-29-37W
PATTEN	PENOBSCOT	23019	45-59-57N	068-26-37W
SOLON	SOMERSET	23025	44-56-58N	69-51-32W
JONESBORO	WASHINGTON	23029	44-39-39N	067-34-11W
MARYLAND				
MASSACHUSETTS				
CHESTER	HAMPSHIRE	25015	42-20-01N	073-00-08W
MIDDLESEX	MIDDLESEX	25017	41-58-00N	71-01-00W
NANTUCKET ISLAND	NANTUCKET	25019	41-17-00N	70-05-00W
MICHIGAN				
GRAND MARAIS	ALGER	26003	46-40-15N	85-59-06W
CHEBOYGAN	CHEBOYGAN	26031	45-38-49N	84-28-28W
PETOSKEY	EMMET	26047	45-22-24N	84-57-19W
MARENISCO	GOGEBIC	26053	46-22-39N	89-42-27W
PORT AUSTIN / BAD AXE	HURON	26063	42-02-46N	82-59-39W
CRYSTAL FALLS	IRON	26071	46-05-53N	88-20-02W
STEUBEN	SCHOOLCRAFT	26153	46-19-00N	86-13-40W
MINNESOTA				
BAUDETTE	LAKE OF THE WOOD	27077	48-42-44N	94-36-00W
TWIN VALLEY	NORMAN	27107	47-15-36N	96-15-32W
MISSISSIPPI				
HATLEY / ABERDEEN	MONROE	28095	33-58-36N	88-25-14W
MISSOURI				
BATES	BATES	29013	38-15-01N	94-21-00W
MOBERLY	RANDOLPH	29175	39-23-48N	092-27-00W
POTOSI	WASHINGTON	29221	38-02-18N	090-35-12W

MONTANA				
BIG HORN LAKE	BIG HORN	30003	45-15-42N	108-02-30W
BLAINE (FT. BELKNAP RES.)	BLAINE	30005	48-26-09N	108-57-43W
EKALAKA	CARTER	30011	46-16-38N	104-25-60W
CUT BANK	GLACIER	30035	48-37-59N	112-19-31W
GLACIER NP / BROWNING	GLACIER	30035	48-41-15N	113-48-15W
PHILIPSBURG	GRANITE	30039	46-22-58N	113-24-57W
LIBBY	LINCOLN	30053	48-27-20N	115-22-11W
CIRCLE	MCCONE	30055	47-25-00N	105-35-30W
ST. REGIS	MINERAL	30061	47-17-58N	115-06-06W
SEELEY LAKE	MISSOULA	30063	47-12-56N	113-36-45W
FORSYTH	ROSEBUD	30087	46-15-58N	106-40-40W
THOMPSON FALLS	SANDERS	30089	47-41-50N	115-06-20W
HARLOWTON	WHEATLAND	30107	46-26-08N	109-50-05W
NEBRASKA				
WEST POINT	CUMING	31039	41-55-40N	96-38-43W
MULLEN	HOOKER	31091	42-02-23N	101-02-32W
NEVADA				
LAKE MEAD / LAKE MOHAVE	CLARK	32003	35-11-59N	114-34-17W
MESQUITE [or BEAVER DAM.AZ]	CLARK	32003	36-48-19N	114-04-01W
WENDOVER	ELKO	32007	40-46-04N	114-06-56W
BATTLE MOUNTAIN	LANDER	32015	40-38-32N	116-56-00W
CALIENTE	LINCOLN	32017	37-24-46N	114-48-40W
BEATTY / DEATH VALLEY NP	NYE	32023	36-54-31N	116-45-30W
HAYDEN PARK	PERSHING	32027	40-23-60N	118-10-00W
LOVELOCK	PERSHING	32027	40-27-16N	118-22-34W
PERSHING COUNTY	PERSHING	32027	40-31-28N	117-57-10W
PYRAMID LAKE	WASHOE	32031	40-22-31N	119-45-01W
GREAT BASIN NP	WHITE PINE	32033	38-56-06N	114-14-37W
MCGILL	WHITE PINE	32033	39-24-32N	114-58-36W
NEW HAMPSHIRE				
HOLDEN HILL	COOS	33007	44-56-47N	71-20-49W
NEW JERSEY				
TRENTON	MERCER	34021	40-13-08N	074-45-58W
NEW MEXICO				
GRANTS	CIBOLA	35006	35-08-50N	107-51-03W
SILVER CITY	GRANT	35017	32-46-12N	108-16-47W
SANTA ROSA	GUADALUPE	35019	34-56-36N	104-40-36W
GALLUP	MCKINLEY	35031	35-31-41N	108-44-31W
ALAMOGORDO	OTERO	35035	32-53-05N	105-57-27W
TUCUMCARI	QUAY	35037	35-10-18N	103-43-28W
RIO ARRIBA (JICARILLA APACHE)	RIO ARRIBA	35039	36-30-33N	106-41-49W
TAOS / CHAMA	RIO ARRIBA	35039	36-23-10N	105-34-38W
LAS VEGAS	SAN MIGUEL	35047	35-35-49N	105-12-00W
TRUTH OR CONSEQUENCES	SIERRA	35051	33-07-42N	107-15-08W
SOCORRO	SOCORRO	35053	34-03-30N	106-53-27W
NEW YORK				
WELLSVILLE	ALLEGANY	36003	42-15-18N	78-01-19W
CHARLOTTE CENTER	CHAUTAUQUA	36013	42-15-02N	79-24-00W
FREWSBURG	CHAUTAUQUA	36013	42-02-48N	079-05-26W
SOUTHERN ADIRONDACK	HAMILTON	36041	44-00-01N	74-30-01W
HAMILTON / WARREN	MADISON	36053	42-29-57N	75-51-10W
NIAGARA	NIAGARA	36063	43-16-04N	79-02-16W
CANTON	ST. LAWRENCE	36089	44-35-00N	75-10-00W
STUEBEN / YATES	YATES	36123	42-37-00N	77-06-00W
NORTH CAROLINA				
ANSON	ANSON	37007	34-59-00N	80-06-00W
LENIOR	CALDWELL	37027	35-56-00N	81-34-00W
YANCEYVILLE	CASWELL	37033	36-24-14N	79-20-11W
CHATHAM	CHATHAM	37037	35-42-53N	79-10-47W
POTTERS HILL	DUPLIN	37061	34-51-00N	77-39-00W
KINSTON	LENOIR	37107	35-15-45N	77-34-55W
WILLIAMSTON	MARTIN	37117	35-51-16N	77-03-21W

GREENVILLE	PITT	37147	35-34-00N	77-23-00W
HOFFMAN / ELLERBE	RICHMOND	37153	35-01-56N	79-32-52W
MADISON	ROCKINGHAM	37157	36-23-07N	79-57-35W
MACON	WARREN	37185	36-26-19N	78-05-03W
ANSON	WAYNE	37191	35-22-00N	78-00-01W
NORTH DAKOTA				
SCRANTON	BOWMAN	38011	46-10-57N	103-02-56W
WISHEK	MCINTOSH	38051	39-05-01N	83-04-19W
UNDERWOOD	MCLEAN	38055	47-46-46N	101-11-03W
KENMARE	WARD	38101	48-08-41N	101-30-27W
OHIO				
FINDLAY	HANCOCK	39063	41-05-58N	83-00-01W
OKLAHOMA				
BALKO	BEAVER	40007	36-36-42N	100-49-42W
GRIGGS	CIMARRON	40025	36-36-09N	102-07-11W
CHICKASHA	GRADY	40051	35-03-09N	97-56-11W
BYNG / ADA	PONTOTOC	40123	34-51-40N	96-39-55W
ANTLERS	PUSMATAHA	40127	34-13-52N	95-37-12W
WEWOKA	SEMINOLE	40133	35-09-31N	96-29-53W
GUYMON	TEXAS	40139	36-40-58N	101-28-52W
OREGON				
BAKER CITY	BAKER	41001	44-46-30N	117-50-00W
BENNETT BUTTE	CURRY	41015	42-26-27N	124-12-07W
BURNS	HARNEY	41025	43-35-11N	119-03-11W
LITTLE WALKER	KLAMATH	41035	43-18-41N	121-45-21W
LAKEVIEW	LAKE	41037	42-11-20N	120-20-41W
SWEET HOME	LINN	41043	44-23-50N	122-44-09W
COLUMBIA GORGE	SHERMAN	41055	45-42-35N	121-31-19W
WALLOWA COUNTY	WALLOWA	41063	45-34-11N	117-31-42W
THE DALLES	WASCO	41065	45-35-41N	121-10-39W
FOSSIL/SNOWBOARD	WHEELER / GILLIAM	41069	44-43-50N	120-04-40W
PENNSYLVANIA				
CLARION	CLARION	42031	41-12-53N	79-23-08W
PUNXSUTAWNEY	JEFFERSON	42065	40-55-46N	78-58-08W
MT CARMEL	NORTHUMBERLAND	42097	40-53-40N	76-40-33w
PUERTO RICO				
VIEQUES	VIEQUES	72147	18-43-53N	65-60-06W
SOUTH CAROLINA				
ALLENDALE	ALLENDALE	45005	32-57-02N	81-20-30W
JEFFERSON	LANCASTER	45057	34-46-00N	80-39-00W
WALHALLA	OCONEE	45073	34-45-53N	83-03-51W
UNION	UNION	45087	34-43-22N	81-37-26W
SOUTH DAKOTA				
REVA	HARDING	46063	45-29-42N	104-19-00W
TRIPP	HUTCHINSON	46067	43-13-30N	97-57-59W
TENNESSEE				
PARSONS / WAYNESBORO	DECATUR / WAYNE	47039	35-13-16N	87-22-26W
SAVANNAH	HARDIN	47071	35-13-57N	88-14-48W
POLK	POLK	47139	35-28-33N	87-26-42W
CYPRESS INN	WAYNE	47181	35-00-43N	87-49-00W
TEXAS				
BIG BEND NP	BREWSTER	48043	29-11-10N	103-24-45W
CHILDRESS / PADUCAH	CHILDRESS	48075	34-25-35N	100-12-13W
VAN HORN	CULBERTSON	48069	31-03-50N	104-27-23W
DALHART	DALLAM / HARTLEY	48111	36-06-33N	102-51-42W
SPUR	DICKENS	48125	33-28-35N	100-51-19W
BENAVIDES	DUVAL	48131	27-35-55N	98-24-28W
BARKSDALE	EDWARDS	48137	29-43-30N	100-02-02W
THALIA	FOARD	48155	33-55-57N	99-43-38W
HASKELL	HASKELL	48207	33-09-27N	99-44-00W

SIERRA BLANCA	HUDSPETH	48229	31-10-28N	105-21-24W
KIRBYVILLE	JASPER	48241	30-43-01N	94-09-01W
HEBBRONVILLE	JIM HOGG	48247	27-18-23N	98-40-41W
LIBERTY	LIBERTY	48291	30-11-05N	94-50-01W
EAGLE PASS	MAVERICK	48323	28-42-32N	100-29-57W
CONROE	MONTGOMERY	48339	30-14-50N	95-27-36W
PERRYTON	OCHILTREE	48357	36-24-00N	100-48-08W
FT. STOCKTON / BAKERSFIELD	PECOS	48371	30-53-38N	102-52-44W
MARFA / ALPINE	PRESIDIO / BREWSTER	48377	30-18-28N	104-01-07W
BIG LAKE	REAGAN	48383	31-22-30N	100-31-00W
PECOS	REEVES	48389	31-25-22N	103-29-34W
STRATFORD	SHERMAN	48421	36-20-10N	102-04-18W
SUTTON	SUTTON	48435	30-31-10N	100-34-30W
SANDERSON	TERRELL	48443	30-08-32N	102-23-37W
BROWNFIELD	TERRY	48445	33-10-52N	102-16-26W
WOODVILLE	TYLER	48457	30-46-30N	94-24-55W
CANTON / WILLS POINT	VAN ZANDT	48467	32-31-30N	99-51-00W
GRAHAM	YOUNG	48503	33-10-49N	98-40-32W
FALCON LAKE	ZAPATA	48505	26-52-17N	99-15-19W
CRYSTAL CITY	ZAVALA	48507	28-54-30N	99-43-08W
UTAH				
PRICE	CARBON	49007	39-29-12N	110-34-00W
CANYONLAND	DAGGETT	49009	40-55-08N	109-25-29W
BRYCE CANYON	GARFIELD	49017	37-37-42N	112-10-01W
NEPHI	JUAB	49023	39-42-37N	111-50-08W
ABAJO PEAK	SAN JUAN	49037	37-50-20N	109-27-42W
CANYONLANDS NP	SAN JUAN	49037	38-10-00N	109-59-00W
MONTICELLO	SAN JUAN	49037	37-54-54N	106-34-12W
CAPITAL REEF NP	SEVIER	49041	38-45-50N	111-54-50W
RICHFIELD	SEVIER	49041	38-46-21N	112-05-00W
SUMMIT COUNTY	SUMMIT	49043	40-53-01N	110-57-57W
WASATCH COUNTY	WASATCH	49051	40-19-58N	111-09-32W
ZION NP	WASHINGTON	49053	37-15-03N	112-57-20W
VERMONT				
GREEN MOUNTAINS	RUTLAND	50021	42-39-25N	72-37-30W
VIRGIN ISLANDS				
ST. THOMAS	ST. THOMAS	78030	18-21-19N	64-56-13W
VIRGINIA				
ONLEY / ACCOMAC	ACCOMACK	51001	37-41-27N	75-42-59W
CHARLOTTESVILLE	ALBEMARLE	51003	38-01-45N	78-28-37W
CLIFTON FORGE	ALLEGANY	51005	37-45-00N	80-14-00W
BOWLING GREEN	CAROLINE	51033	38-03-00N	77-21-00W
EMPORIA	EMPORIA CITY	51595	36-41-09N	77-32-34W
HALIFAX / SOUTH BOSTON	HALIFAX	51083	36-45-57N	78-55-43W
SOUTH HILL	MECKLENBERG	51117	36-38-30N	78-12-40W
ROCKBRIDGE	ROCKBRIDGE	51163	37-48-54N	79-24-33W
TAZEWELL	TAZEWELL	51185	37-08-00N	81-33-00W
WISE	WISE	51195	37-00-01N	82-34-40W
SAND MOUNTAIN	WYTHE	51197	36-56-54N	81-05-06W
WASHINGTON				
LAKE CHELAN / METHOW VALLEY	CHELAN / OKANOGAN	53007	47-50-04N	120-00-41W
OLYMPIC NATIONAL PARK	CLALLAM	53009	47-58-35N	123-41-13W
DAYTON	COLUMBIA	53013	46-50-30N	117-38-30W
PASCO	FRANKLIN	53021	46-15-05N	119-04-53W
POMEROY	GARFIELD	53023	46-28-30N	117-36-06W
MOSES LAKE / EPHRATA	GRANT	53025	47-07-49N	119-16-37W
N. CENTRAL COAST	GRAYS HARBOR / PACIFIC	53027	46-31-40N	123-40-50W
MOUNT RANIER	PIERCE	53053	46-51-10N	121-45-31W
MT RAINIER NP	PIERCE / LEWIS	53053	47-26-00N	121-48-40W
SKAGIT VALLEY	SKAGIT	53057	48-23-01N	122-21-42W
STEVENS	STEVENS	53065	48-23-49N	117-51-10W
BLAINE AREA	WHATCOM	53073	48-48-40N	121-56-70W
NACHES	YAKIMA	53077	46-20-30N	120-52-50W
WEST VIRGINIA				
WELCH	MCDOWELL	54047	36-48-06N	110-56-36W
WAYNE COUNTY	WAYNE	54099	37-24-10N	81-22-49W
TBD	WETZEL	54103	39-33-55N	80-40-41W
WISCONSIN				
WYOMING				

[FR Doc. 05–6991 Filed 4–7–05; 8:45 am]

BILLING CODE 3410–15–C

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 8, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: On February 4, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 5964) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type/Location: Base Supply Center, Portsmouth Naval Shipyard, Portsmouth, New Hampshire.
NPA: Central Association for the Blind & Visually Impaired, Utica, New York.
Contracting Activity: Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–1622 Filed 4–7–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must Be Received on or Before: May 8, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *SKennerly@jwod.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Bag, T-Shirt Style (European Region), 8105–00–NIB–1023.
NPA: Envision, Inc., Wichita, Kansas.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Service

Service Type/Location: Mailroom Operation, DC Pretrial Services Agency, 633 Indiana Avenue, NW., Washington, DC.
NPA: Didlake, Inc., Manassas, Virginia.
Contracting Activity: DC Pretrial Services Agency, Washington, DC.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Point Mugu Naval Air Station (Basewide), Point Mugu, California.
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–1623 Filed 4–7–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Suspension of Effective Date

In the document appearing on page 15287, FR Doc 05–5961, in the issue of March 25, 2005, in the first column, the Committee published an effective date of April 24, 2005 for addition of the Base Supply Center & Individual Equipment Element, Hill Air Force Base, Utah to the Procurement List. This effective date has been suspended until further notice.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–1624 Filed 4–7–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give All Interested Parties an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD FEBRUARY 17, 2005—MARCH 25, 2005

Firm name	Address	Date petition accepted	Product
Dura-Cast, Inc.	201 N. Industrial Park Road, Enterprise, AL 36330	3/4/2005	Die castings for motor vehicle fittings and mountings, electromechanical devices and parts, and cooking appliances and parts for gas and other fuels.
Elsner Engineering Works, Inc	475 Fame Avenue, Hanover, PA 17331	3/4/2005	Machinery used to make paper products.
Riverside Furniture	1400 South 6th Street, Fort Smith, AR 72902	3/4/2005	Wooden desks and wall units.
Terry Manufacturing Company	2324 West Reagan, Palestine, TX 75802	3/4/2005	Wooden cabinets.
Cornelia Broom Co., Inc.	756 Hoyt Street, Cornelia, GA 30531	3/14/2005	Corn brooms and painted broom handles.
Heavywood Furniture Co., Inc	66126 Industrial Boulevard, Toccoa, GA 30577	3/14/2005	Wood furniture for institutional applications.
Masters Custom Woodworks, Inc	7203 East Reading Place, Tulsa, OK 74115	3/14/2005	Wood cabinets, doors and furniture.
Precision Custom Components, LLC	500 Lincoln Street, York, PA 17405	3/14/2005	Precision components for the commercial nuclear, military and industrial sectors.
Craig D. Larson, dba Black Mountain Fisheries, LLC.	P.O. Box 220, Carlton, WA 98814	2/17/2005	Crabs.
Lehighton Electronics, Inc	1st & South Streets, Lehighton, PA 18235	2/17/2005	Measuring and controlling instruments.
Pentaplex, Inc.	1725 Fleetwood Drive, Elgin, IL 60123	3/17/2005	Printed circuit boards.
InSport International, Inc.	1870 NW 173rd Avenue, Beaverton, OR 97006	3/21/2005	Men's and women's short.
A & M Optical Company, Inc	5211 Highway 153, Chattanooga, TN 37343	3/24/2005	Precision ground eyeglass lenses.
Custom Production, Inc.	3100 Adora Teal Way, Crestview, FL	3/24/2005	Bicycle sprockets and components.
EZ Tooler, Inc.	6236 Paducah Road, La Center, KY 42056	3/24/2005	Woodworking machines.
Goody Products, Inc.	400 Galleria Parkway, Atlanta, GA 30339	3/24/2005	Brushes, hair accessories and other personal care products.
King Tool, Inc.	5350 Love Lane, Bozeman, MT 59718	3/24/2005	Hand tools, *i.e.* vises, picks, and scribes.
Pennset, Inc.	164 West 9th Street, Bloomsburg, PA 17815	3/24/2005	Prepress book composition products for the book publishing industry.
Ted Ruhling Company, Inc	1602 SW Jefferson Lee's Summit, MO 64081	3/24/2005	Pool and pond, netted quipment.
Automated Equipment Services, Inc	2335 W. Vancouver Street, Broken Arrow, OK 74012	3/25/2005	Parts for robotic automation, including spare parts, feeders, and surgery units.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by

Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: April 4, 2005.

Anthony J. Meyer,

Senior Program Analyst, Office of Strategic Initiatives.

[FR Doc. 05–7001 Filed 4–7–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2003 through December 31, 2003. We preliminarily find that the countervailing duty rates during the period of review for all of the producers/exporters under review are less than 0.5 percent and are, consequently, *de minimis. See* the ''Preliminary Results of Review'' section, below. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection to liquidate entries during the period January 1, 2003 through December 31, 2003 without regard to countervailing duties in accordance with 19 CFR 351.106(c)(1). We are also rescinding the review for Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. and Pastificio Antonio Pallante S.r.1. in accordance with 19 CFR 351.213(d)(3). Interested parties are invited to comment on these preliminary results (*see* the ''Public Comment'' section of this notice).

DATES: *Effective Date:* April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Melani Miller Harig or Mac Rivitz, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116 and (202) 482–1382, respectively.

SUPPLEMENTARY INFORMATION

Case History

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy,* 61 FR 38544 (July 24, 1996). On July 1, 2004, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2003, the period of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 69 FR 39903 (July 1, 2004). On July 30, 2004, we received requests for reviews from the following four producers/exporters of Italian pasta: Pastificio Antonio Pallante S.r.1. (''Pallante''), Pastificio Corticella S.p.A. (''Corticella'')/Pastificio Combattenti S.p.A. (''Combattenti'') (collectively, ''Corticella/Combattenti''), Pasta Lensi S.r.1. (''Lensi''),[1] and Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. (collectively, ''Russo/Di Nola''). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 52857 (August 30, 2004).

On September 7,2004, we issued countervailing duty questionnaires to the Commission of the European Union, the Government of Italy (''GOI''), Pallante, Corticella/Combatteni, Lensi, and Russo/Di Nola. We received responses to our questionnaires in October and November 2004. We issued supplemental questionnaires to the respondents in November 2004, and received responses to our supplemental questionnaires in November and December 2004.

On September 15, 2004, Russo/Di Nola withdrew its request for review. Pallante withdrew its request for review on October 28, 2004. As discussed in the ''Partial Rescission'' section, below, we are rescinding this administrative review for both Russo/Di Nola and Pallante.

[1] Lensi is the successor-in-interest to IAPC Italia S.r.1. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy,* 68 FR 41553 (July 14, 2003).

Partial Rescission

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On September 15, 2004, Russo/Di Nola withdrew its request for an administrative review; Pallante withdrew its request for an administrative review on October 28, 2004. Both parties submitted their withdrawal requests within the 90-day deadline. No other party requested a review of Pallante's or Russo/Di Nola's sales. Therefore, because these withdrawal requests were timely filed, we are rescinding this review with respect to Pallante and Russo/Di Nola in accordance with 19 CFR 351.213(d)(1). We will instruct U.S. Customs and Border Protection (''Customs'') to liquidate any entries from Pallante and Russo/Di Nola during the POR and to assess countervailing duties at the rate that was applied at the time of entry.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l' Agricoltura Biologica, or Codex S.r.L. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file

in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department Building.

The merchandise subject to review is currently classifiable under items 1901.90.9095 and 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti\circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti-Circumvention Inquiry on Antidumping Duty Orders on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the antidumping Duty Order,* 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* memorandum from John Brinkmann to Rickard Moreland, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti-circumvention inquiry. *See Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Period of Review

The period for which we are measuring subsidies, or POR, is January 1, 2003 through December 31, 2003.

Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (''*Modification Notice*'').[2] The Department's new methodology is based on a rebuttable ''baseline'' presumption that non-recurring, allocable subsides continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life (''AUL'') of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's-length transaction for fair market value.

In considering whether the evidence presented demonstrates that the transaction was conducted at arm's length, we will be guided by the definition of an arm's-length transaction included in the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 (1994), which defines an arm's-length transaction as a transaction negotiated between unrelated parties, each acting in its own interest, or between related parties such that the terms of the transaction are those that would exist if the transaction had been negotiated between unrelated parties. *See id.* at 928.

In analyzing whether the transaction was for fair market value, the basic question is whether the full amount that the company or its assets (including the value of any subsidy benefits) was actually worth under the prevailing market conditions was paid, and paid through monetary or equivalent compensation. In making this determination, the Department will normally examine whether the seller acted in a manner consistent with the normal sales practices of private, commercial sellers in that country. Where an arm's-length sale occurs between purely private parties, we would normally expect the private seller to act in a manner consistent with the normal sales practices of private, commercial sellers in that country. With regard to a government-to-private transaction, however, where we cannot make that same assumption, a primary consideration in this regard normally will be whether the government failed to maximize its return on what it sold, indicating that the purchaser paid less for the company or assets than it otherwise would have had the government acted in a manner

[2] The *Modification Notice* explicitly addresses full privatizations, but notes that the Department would not make a decision at that time as to whether the new methodology would also be applied to other types of ownership changes and factual scenarios, such as partial privatizations or private-to-private sales. *See* 68 FR at 37136. We have now determined to apply the new methodology to full, private-to-private sales of a company (or its assets) as well. Among other reasons, we note that our prior ''same person'' methodology used for analyzing changes in ownership such as private-to-private sales has been found not in accordance with law in *Allegheny Ludlum Corp.* v. *United States,* 367 F.3d 1339 (Fed. Cir. 2004).

consistent with the normal sales practices of private, commercial sellers in that country.

If we determine that the evidence presented does not demonstrate that the change in ownership was at arm's length for fair market value, the baseline presumption will not be rebutted and we will find that the unamortized amount of any pre-sale subsidy benefit continues to be counteravailable. Otherwise, if it is demonstrated that the change in ownership was at arm's length for fair market value, any pre-sales subsidies will be presumed to be extinguished in their entirety and, therefore, non-counteravailable.

A party can, however, obviate this presumption of extinguishment by demonstrating that, at the time of the change in ownership, the broader market conditions necessary for the transaction price to reflect fairly and accurately the subsidy benefit were not present, or were severely distorted by government action (or, where appropriate, inaction). In other words, even if we find that the sales price was at ''market value,'' parties can demonstrate that the broader market conditions were severely distorted by the government and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action.

Where a party demonstrates that these broader market conditions were severely distorted by government action and that the transaction price was meaningfully different from what it would otherwise have been absent the distortive government action, the baseline presumption will not be rebutted and the unamortized amount of any non-recurring pre-sale subsidy benefit will continue to be countervailable. Where a party does not make such a demonstration with regard to an arm's-length sale for fair market value, we will find all non-recurring pre-sale subsidies to be extinguished by the sale and, therefore, non-countervailable.

In the instant proceeding, Corticella/Combattenti underwent changes in ownership during the applicable period. Corticella/Combattenti did not challenge the Department's baseline presumption that non-recurring subsidies continue to benefit the recipient over the allocation period. Thus, we preliminarily find for this respondent that any unallocated benefits from non-recurring subsidies received prior to its change in ownership continue to be countervailable.

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''IRS Tables''). *See* 19 CFR 351.524(d)(2). For pasta, the IRS Tables prescribe an AUL of 12 years. None of the responding companies or interested parties objected to this allocation period. Therefore, we have used the 12-year allocation period for all respondents.

Attribution of Subsidies

Pursuanty to 19 CFR 351.525(b)(6), the Department will attribute subsidies received by certain companies to the combined sales of those companies. Based on our review of the responses, we preliminarily find that ''cross-ownership'' exists with respect to certain companies, as described below, and we have attributed subsidies accordingly.

Lensi: Lensi is an Italian producer and exporter of pasta. As further discussed in the April 4, 2005 proprietary memorandum entitled ''Pasta Lensi S.r.1.—Attribution Issues,'' which is on file in the Department's CRU, Lensi has reported that IAPC Leasing, another company in Lensi's family of companies, did not receive any benefits under the programs being examined. Therefore, there are no benefits to this company that require attribution. Moreover, IAPC Leasing does not produce subject merchandise. Thus, we are attributing any subsidies received to Lensi's sales only.

Corticella/Combattenti: Corticella and Combattenti are both producers of the subject merchandise and are owned by the same holding company, Euricom S.p.A. (''Euricom''), and companies in the Euricom group. Euricom group companies own 100 percent of Combattenti and 70 percent of Corticella. Other Euricom group companies are also involved in the production and distribution of subject merchandise. Specifically, one group company (whose name is proprietary), receives a commission on some of Corticella's home market sales. Also, Euricom group company Molini Certosa S.p.A. (''Certosa'') mills durum and non-durum wheat, some of which is an input for the Corticella/Combattenti subject merchandise.

Additionally, Cooperative Lomellina Cerealicoltori (''CLC''), which is a cooperative, provides conversion services for Combattenti. CLC was formed in 1980 for the sole purpose of producing rise. In 1990, CLC signed an agreement with Combattenti to ''toll produce all of Combattenti's pasta production requirements'' following a fire at Combattenti's pasta factory. *See* Corticella/Combattenti's November 5, 2004 submission at Exhibit 2, page 5. CLC is not part of the Euricom group and Euricom is not a member of CLC. However, Euricom's majority shareholder is a member/shareholder of the CLC cooperative. Euricom's majority shareholder was the sole administrator of Combattenti during most of the POR, and also ''had operational and management control over CLC and could direct CLC's workers.'' *See id.* The son of Euricom's majority shareholder was also a CLC member/shareholder, as well as member of both Combattenti's and CLC's boards, and was ''very active in both companies day to day activities.'' *See id.* According to Corticella/Combattenti, Euricom's majority shareholder and his son control ''the direction of CLC and Combattenti,'' with Euricom's majority shareholder ''taking a more strategic role'' and his son ''taking a hands-on-day-to-day operational role.'' *See* Corticella/Combattenti's December 6, 2004 submission at 4.

With regard to Corticella and Combattenti, we preliminarily find that they each meet the criteria for cross-ownership in 19 CFR 351.525(b)(6)(ii). As for Certosa, we preliminarily find that it meets the criteria in 19 CFR 351.525(b)(6)(iv). With regard to the Euricom group company that receives a commission on some of Corticella's home market sales, the company does not meet any of the criteria in 19 CFR 351.525(b)(6)(ii) through (iv). Moreover, because Corticella/Combattenti has reported that this company acts as a selling agent only on Corticella's home market sales and not on its exports, 19 CFR 351.525(c) does not apply. Thus, we are also not including subsidies received by this company or this company's sales in our preliminary subsidy calculations.

Finally, with regard to CLC, in *Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review,* 69 FR 70657 (December 7, 2004) (''*Pasta Seventh Review*'') and the accompanying Issues and Decision Memorandum in the ''Attribution of Subsidies'' section, we determined that cross-ownership did not exist with regard to CLC consistent with 19 CFR 351.525(b)(6)(vi). In the

instant review, we have new information with regard to CLC and its relationship with Combattenti and the Euricom group that might, otherwise, warrant a reconsideration of our earlier finding. However, because CLC did not receive any benefits under the programs being examined, and because CLC's other division (the first being the division that operates the Combattenti facilities), has no past-related operations, there is no need in the instant review to revisit our previous finding on this matter.

Combattenti/Corticella has reported that Euricom and Certosa did not receive any POR subsidies. Thus, we are attributing any subsidies received to the combined sales of Corticella and Combattenti.

Discount Rates

Pursuant to 19 CFR 351.524(d)(3)(i)(B), we used the national average cost of long-term, fixed-rate loans as a discount rate for allocating non-recurring benefits over time because no company for which we need such discount rates took out any loans in the years in which the government agreed to provide the subsidies in question. Consistent with past practice in this proceeding, for years prior to 1995, we used the Bank of Italy reference rate adjusted upward to reflect the mark-up an Italian commercial bank would charge a corporate customer. For benefits received in 1995 and later, we used the Italian Bankers' Association interest rate, increased by the average spread charged by banks on loans to commercial customers plus an amount for bank charges.

Analysis of Programs

I. Program Preliminarily Determined To Confer Subsidies During the POR

Export Marketing Grants Under Law 304/90

Under Law 304/90, the GOI provided grants to promote the sale of Italian food and agricultural products in foreign markets. The grants were given for pilot projects aimed at developing links and integrating marketing efforts between Italian food producers and foreign distributors. The emphasis was on assisting small and medium-sized enterprises.

Corticella received a grant under this program in 1993 to assist it in establishing a sales office and network in the United States. No other respondent covered by this review received benefits under this program during the POR.

In the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288 (June 14, 1996) (''*Pasta Investigation*''), the Department determined that these export marketing grants confer a countervailable subsidy within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOI bestowing a benefit in the amount of the grant. Also, these grants were found to be specific within the meaning of section 771(5A)(B) of the Act because their receipt was contingent upon exportation. In this review, neither the GOI nor the responding companies have provided new information which would warrant reconsideration of our determination that these grants confer a countervailable subsidy.

Also in the *Pasta Investigation*, the Department treated these export marketing grants as non-recurring. No new information has been placed on the record of this review that would cause us to depart from this treatment.

Because the amount of the grant that was approved by the GOI exceeded 0.5 percent of Corticella's exports to the United States in the year of approval, we used the grant methodology described in 19 CFR 351.524(d) to allocate the benefit over time. We divided the benefit attributable to the POR by the value of the companies' total exports to the United States in the POR.

On this basis, we preliminarily determine the countervailable subsidy from these Law 304/90 export marketing grants to be 0.06 percent *ad valorem* for Corticella/Combattenti.

II. Programs Preliminarily Determined Not To Confer Subsidies During the POR

A. Social Security Reductions and Exemptions—Sgravi

Italian law allows companies, particularly those localted in the Mezzogiorno (sourthern Italy), to use a variety of exemptions and reductions (sgravi) of the payroll contributions that employers make to the Italian social security system for health care benefits, pensions, etc. The sgravi benefits are regulated by a complex set of laws and regulations, and are sometimes linked to conditions such as creating more jobs. We have found in past segments of this proceeding that the benefits under some of these laws (*e.g.*, Laws 183/76 and 449/97) are available only to companies located in the Mezzogiorno and other disadvantaged regions. Other laws (*e.g.*, Laws 407/90 and 863/84) provide benefits to companies all over Italy, but the level of benefits is higher for companies in the south than for companies in other parts of the country.

The various laws identified as having provided sgravi benefits during the POR are the following: Law 407/90 (Lensi), Law 223/91 (Lensi and Combattenti), and Law 337/90 (Corticella).

In the instant review, no party in this proceeding challenged our past determinations in the *Pasta Investigation* and subsequent reviews that sgravi benefits were not countervailable for companies located outside of the Mezzogiorno. Additionally, no new information or evidence of changed circumstances was received that would warrant reconsideration of these past determinations. Therefore, because Lensi and Corticella/Combattenti are not located in the Mezzogiorno, we find that neither of these companies recieved countervailable subsidies under this program during the POR.

B. Brescia Chamber of Commerce Grants

The Chamber of Commerce of Brescia provided training grants during 2002 and 2003 to companies in the province of Brescia for the professional training of entrepreneurs, directors, and employees. The goal of these grants was to improve economic, social, and productive development in the province. The Brescia Chamber of Commerce also provided grants to small and medium-sized enterprises, artisan and agricultural enterprises, and pools and cooperatives in the province of Brescia for their direct participation in fairs and exhibitions abroad during calendar year 2003.

Lensi was the only respondent in this proceeding that reported receiving grants from the Brescia Chamber of Commerce. Specifically, Lensi reported receiving training grants from the Brescia Chamber of Commerce in 2002 and 2003. Lensi also reported receiving a fairs and exhibitions grant in 2004, subsequent to the POR.

With regard to the training grants, in situations where any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of counteravailability, it may not be necessary to determine whether benefits conferred under these programs to the subject merchandise are counteravailable. (*See, e.g., Pasta Seventh Review* and *Live Cattle From Canada; Final Negative Countervailing Duty Determination,* 64 FR 57040, 57055 (October 22, 1999).) In this instance, any benefit to the subject merchandise resulting from this grant would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of counteravailability. Thus, consistent with our past practice, we do not consider it necessary to determine

whether benefits conferred thereunder to the subject merchandise are countervailable.

As for the fairs and exhibitions grant, because it was received in 2004, subsequent to the POR, we preliminarily find that no benefit was provided to Lensi during the POR from this grant.

III. Programs Preliminarily Determined Not to Have Been Used During the POR

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise under review did not apply for or receive benefits under these programs during the POR:

A. *Industrial Development Grants Under Law 488/92*
B. *Industrial Development Loans Under Law 64/86*
C. *European Regional Development Fund Grants*
D. *Law 236/93 Training Grants*
E. *Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)*
F. *Development Grants Under Law 30 of 1984*
G. *Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans*
H. *Industrial Development Grants Under Law 64/86*
I. *Law 317/91 Benefits for Innovative Investments*
J. *Tremonti Law 489/94 (Formerly Law Decree 357/94)*
k. *Ministerial Decree 87/02*
L. *Law 10/91 Grants to Fund Energy Conservation*
M. *Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)*
N. *Regional Tax Exemptions Under IRAP*
O. *Corporate Income Tax (IRPEG) Exemptions*
P. *Export Restitution Payments*
Q. *VAT Reductions Under Laws 64/86 and 675/55*
R. *Export Credits Under Law 227/77*
S. *Capital Grants Under Law 675/77*
T. *Retraining Grants Under Law 675/77*
U. *Interest Contributions on Bank Loans Under Law 675/77*
V. *Interest Grants Financed by IRI Bonds*
W. *Preferential Financing for Export Promotion Under Law 394/81*
X. *Urban Redevelopment Under Law 181*
Y. *Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)*
Z. *Industrial Development Grants under Law*
AA. *Interest Subsidies Under Law 598/94*
AB. *Duty-Free Import Rights*
AC. *Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77*
AD. *European Social Fund Grants*
AE. *Law 113/86 Training Grants*
AF. *European Agricultural Guidance and Guarantee Fund*

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. For the period January 1, 2003 through December 31, 2003, we preliminarily find the net subsidy rates for the producers/exporters under review to be those specified in the chart shown below:

Producer/exporter	Net subsidy rate (percent)
Pasta Lensi S.r.1.	[1] 0.00
Pastificio Corticella S.p.A./ Pastificio Combattenti S.p.A. ..	[1] 0.06

[1] *De minimis.*

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

If the final results of this review remain the same as these preliminary results, because the countervailing duty rates for all of the above-noted companies are less than 0.5 percent and, consequently, *de minimis,* we will instruct Customs to liquidate entries during the period January 1, 2003 through December 31, 2003 without regard to countervailing duties in accordance with 19 CFR 351.106(c)(1). The Department will issue appropriate instructions directly to Customs within 15 days of publication of these final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.IIi S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), the Department has directed Customs to assess countervailing duties on all entries between January 1, 2003 and December 31, 2003 at the rates in effect at the time of entry.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties for the above-noted companies at the above-noted rates on the f.o.b. value of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms (except Barilla G. e R. F.IIi S.p.A, and Gruppe Agricoltura Sana S.r.L., which are excluded from the order), we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or all others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–6958 Filed 4–7–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 041103306–5014–02]

RIN 0693–AB54

Announcing Approval of Federal Information Processing Standard (FIPS) Publication 201, Standard for Personal Identity Verification of Federal Employees and Contractors

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The Secretary of Commerce has approved Federal Information

Processing Standard (FIPS) Publication 201, Standard for Personal Identity Verification of Federal Employees and Contractors, and has made it compulsory and binding on Federal agencies for use in issuing a secure and reliable form of personal identification to employees and contractors. The standard does not apply to personal identification associated with national security systems as defined by 44 U.S.C. 3542(b)(2).

Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued by the Federal Government to its employees and contractors (including contractor employees). HSPD–12 specified that the secure and reliable forms of identification to be issued to employees and contractors should be based on: sound criteria for verifying an individual employee's identity; strong resistance to identity fraud, tampering, and terrorist exploitation; capability of being rapidly authenticated electronically; and issuance by providers whose reliability has been established by an official accreditation process.

FIPS 201 was developed to satisfy the technical, administrative, and timeliness requirements of HSPD 12. The standard was developed in a ''manner consistent with the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a) and other statutes protecting the rights of Americans'' as required in HSPD 12. In developing the standard, NIST used technical input solicited from industry and government participants in workshops and public meetings, and from a **Federal Register** notice (69 FR 68128) of November 23, 2004, inviting comments from industry and government on the draft standard.

DATES: This standard is effective February 24, 2005.

ADDRESSES: A copy of FIPS Publication 201 is available electronically from the NIST Web site at: *http://csrc.nist.gov/publications/*.

FOR FURTHER INFORMATION CONTACT: W. Curtis Barker, (301) 975–8443, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, e-mail: *wbarker@nist.gov*.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (69 FR 55586) on September 15, 2004, announcing a Public Workshop on Personal Identity Verification (PIV) of Federal Employees/Contractors. The primary goal of the workshop was to obtain information on secure and reliable methods of verifying the identity of Federal employees and contractors who are given authorized access to Federal facilities and information systems. Workshop participants included representatives from government and industry organizations. An overview of the requirements of HSPD 12 and the schedule established by NIST for developing and promulgating the required standard were discussed.

A **Federal Register** notice [69 FR 68128] was published on November 23, 2004, announcing draft FIPS 201 and soliciting comments on the draft standard from the public, research communities, manufacturers, voluntary standards organizations, and Federal, State, and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST Web pages. Information was provided about the submission of electronic comments and an electronic template for the submission of comments was made available.

Comments, responses, and questions were received from 55 private sector organizations, groups, or individuals, 33 Federal government organizations and one Canadian government organization.

These comments have all been made available by NIST at *http://csrc.nist.gov/piv-project/fips201-support-docs.html.* Many of the comments received recommended editorial changes, provided general comments, and asked questions concerning the implementation of the standard. Many comments supported the goals of personal identity verification. Some of the comments recommended against adoption of this or any similar standard.

The primary interests and issues that were raised in the comments included: Installed or competing technology; emerging technology and standards; technology neutrality; privacy; security; timeliness; cost; interoperability; scope; applicability; flexibility; simplicity; consistency; and ease of use. Detailed technical comments covered issues including: Identity proofing and registration; smart card topology; card programming; biometrics; graduated levels of assurance/protection; public key infrastructure supporting digital signatures for data security and authentication.

The technical specifications were modified based on the comments received, while maintaining a complete, coherent standard. The standard was modified to strengthen the process for assuring the secure and reliable identification of Federal employees and contractors to whom PIV cards are to be issued. Applicants for PIV cards are to appear in person, provide two original documents showing identity, and provide background information that can be verified. Agencies are required to photograph and fingerprint applicants, to initiate background checks using the National Agency Check with Inquiries (NACI) or National Agency Check (NAC) procedures, and to complete other steps to assure security, privacy and proper storage of information. NIST has also revised the standard to provide for specified graduated security levels of protection features from the least secure to the most secure, in accordance with the requirements of HSPD–12. These features are provided within the standard with technical assurances and for agency use in selecting the appropriate level of security for each application. Other technical questions and issues including the specifications for the PIV card interface and the biometric algorithm interface are addressed in technical publications that accompany and support the implementation of FIPS 201. Draft NIST Special Publication 800–73, Integrated Circuit Card for Personal Identity Verification, and draft NIST Special Publication 800–76, Biometric Data Specification for Personal Identity Verification, have been posted on NIST's Web pages for public review and comment. These documents can be found at *http://csrc.nist.gov/publications/drafts.html.* Additional Special Publications will be developed as needed and made available for public review.

Issues concerning agency budget constraints and the schedule for implementation of the standard have been referred to the Office of Management and Budget (OMB). Comments noting ambiguities or asking for clarification concerning the standard have been incorporated into a Frequently Asked Questions (FAQ) document to be published and maintained on NIST's Web pages in the PIV Project Web site. All of the editorial suggestions were carefully reviewed and changes were made to the standard where appropriate.

A **Federal Register** notice [69 FR 78033] was published on December 29, 2004, announcing a public meeting that was held on January 19, 2005, to discuss the privacy, security, and policy issues associated with HSPD–12. Many other meetings and discussions with industry and government representatives were

held to balance the different, conflicting, and often mutually exclusive interests of the parties providing comments. The approved standard reflects these balanced interests while meeting the overall objectives of quality and timeliness of the standard.

Following is an analysis of the comments received, including the interests, concerns, recommendations, and issues considered in the development of FIPS 201. More information about the development of FIPS 201 is available on NIST's Web pages at *http://www.csrc.nist.gov.*

Comment: Some Federal agencies were concerned about the cost of implementing the standard, their ability to implement the standard within their budget constraints and the tight schedule specified in the standard for implementation.

Response: Issues concerning the costs of implementing the standard and the schedule for implementation have been referred to the Office of Management and Budget (OMB).

Comment: Comments were received about protecting the privacy of individuals, and limiting the sharing of information on personal identity between organizations. Some comments expressed concern about the interoperability provisions of the PIV card possibly leading to the linking of databases with information about individuals, and the issuance of a national identity card.

Response: The privacy requirements contained in FIPS 201 and guidance to agencies to ensure the privacy of applicants for PIV cards have been strengthened in Section 2.3. The requirements for agencies include: The appointment of a PIV Privacy Official; the assessment of systems for their impact on privacy; identification of information to be collected about individuals and how the information will be used; assurance that systems containing personal information adhere to fair information practices; and audits of systems for compliance with privacy policies and practices. OMB has informed NIST that it intends to issue privacy and implementation guidance to agencies.

Comment: Comments were received about ambiguities in the standard and issues that needed to be clarified, both in the text of the standard and in the diagrams that accompany the text. Other comments and questions pertained to agency authority in determining those individuals to whom PIV cards should be issued.

Response: Comments noting technical ambiguities and requests for clarification concerning specific provisions in the standard were reviewed and changes to clarify the intent were incorporated into the standard where appropriate. Comments requesting clarification on issues not specifically addressed in the technical specifications, such as costs, policies, agency roles and responsibilities have been addressed and answered in a document of Frequently Asked Questions (FAQ). This document will be published when the standard is approved and will be maintained on NIST's Web pages in the PIV Project Web site. Other comments noting ambiguities dealing with implementation of the standard will be addressed in the implementation guidance currently under development.

Comment: Technical issues were raised concerning identity validation or ''proofing'' to be performed when initiating the issuance of a PIV Card, and the graduated criteria from the least secure to the most secure. These protection features were required in HSPD–12 to ensure flexibility in selecting the appropriate level of security for each application.

Response: The technical specifications were modified based on the comments received, while maintaining a complete, coherent standard, and including the required graduated security levels of protection. The specifications were modified to allow for the use of a government-issued document and a background check to assure the identity of the individual to whom a card would be issued. The security features are provided within the revised standard with technical assurances, and are available for agency use in selecting the appropriate level of security, from some security to very high security, for each form of identity issued and for each application.

Comment: Technical issues were raised concerning the PIV Card interface and the biometric specifications. Some comments pointed out that the requirement for two fingerprint images and a facial image would occupy most of the storage capabilities of the chip on the card. Other comments pertained to the number of fingerprints that should be included on a PIV card, and recommended the use of additional biometric information.

Response: Since the storage of a facial image of the applicant on the chip would consume much of the electronic memory of a PIV card, the specifications were modified to require only two fingerprint storage. The use of fingerprint data provides a reliable and secure means of automated identification, and agencies are required to put photographs of applicants on the cards for a visual means of identification. The use of a stored facial image on the PIV card can be evaluated in the future as card capacity increases. Issues concerning the card interface and the storage of personal information are addressed in technical publications that accompany FIPS 201, including draft NIST Special Publication 800–73, Integrated Circuit Card for Personal Identity Verification, and other planned Special Publications. Additionally, the interface and formatting requirements for biometric information are addressed in draft NIST Special Publication 800–76, Biometric Data Specification for Personal Identity Verification. SP 800–73 and SP 800–76 have been posted on NIST's web pages for public review and comment [*http://csrc.nist.gov/publications/drafts.html*]. The issuance of recommendations for interfaces, storage and formatting specifications in Special Publications allows for flexibility and adaptability as the technology improves.

Comment: Issues were raised about the card specifications, including the use of certain authentication protocols. Other issues concerned the topology, or physical layout, of the card, and the authority of agencies to select formats, appearances of the card and special security threats.

Response: Clarifications were made to the text of the standard to make the requirements for authentication protocols more specific. The authentication mechanisms that are provided in the standard enable agencies to implement methods including visual identification, use of biometric data, and use of asymmetric keys, which help to establish the agency's confidence in the identity of a cardholder presenting a PIV card. The text was clarified to identify those areas where agencies can have flexibility in determining the format and appearance of the card. The inclusion of a photograph of a PIV cardholder is mandatory. The use of an agency seal is optional. Because of certain heightened overseas threats an agency may issue credentials that do not contain (or otherwise do not fully support) the wireless and/or biometric capabilities.

Comment: Issues were raised concerning the secure administration of the card-issuing system, including processes for renewal of cards, for making changes to the cards, for protecting against fraud, counterfeiting, and modification of cards, and for including agency and personal information on cards.

Response: These topics will be addressed in the Frequently Asked

Questions document that will be available on NIST's web pages when the standard is issued, and in currently available draft Special Publications, as well as future NIST Special Publications.

This action has been determined to be significant under E.O. 12866.

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act (FISMA) of 2002 (Pub. L. 107–347), the Secretary of Commerce is authorized to approve Federal Information Processing Standards (FIPS). Homeland Security Presidential Directive (HSPD) 12 entitled ''Policy for a Common Identification Standard for Federal Employees and Contractors'', dated August 27, 2004, directed the Secretary of Commerce to promulgate, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued by the Federal Government to its employees and contractors.

Dated: March 30, 2005.

Hratch G. Semerjian,

Acting Director, NIST.

[FR Doc. 05–7038 Filed 4–7–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040505C]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Bottomfish Plan Team (BPT) meeting in Honolulu, HI. See **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items.

DATES: The meeting of the PCPT will be held on April 27 to 28, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The BPT meeting will be held at the Western Pacific Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on April 27–28, 2005 to discuss the following agenda items:

Wednesday, 27 April, 8:30 a.m.

1. Introduction and assign rapporteurs
2. 2004 Annual Report
a. Review 2004 Annual Report modules and recommendations
d. 2004 Annual Report region-wide recommendations
3. Overfishing/Overfished control rules
a. Status of the Stock Report
b. Review recommendations from Stock Assessment Workshop and report on status
c. Overfishing control rule as applied to Guam and Hawaii fisheries
d. Discussion and recommendations

Thursday, 28 April, 8:30 a.m.

4. Archepelagic Ecosystem-based management plan
a. NMI Pilot Project
b. Report on ecosystem workshop
c. Discussion and recommendations
5. Hawaii Bottomfish management
a. National Ocean Service NWHI Sanctuary Designation Process
b. Council Draft Regulations
c. Discussion and recommendations
6. Plan Team Recommendations
7. Other Business

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda. The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

April 5, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–1639 Filed 4–7–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments Regarding Possible Safeguard Action on Imports from China of Cotton Knit shirts and Blouses

April 6, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments regarding possible safeguard action on imports from China of cotton knit shirts and blouses, Category 338/339.

SUMMARY: The Committee has decided, on its own initiative, to consider whether imports of Chinese origin cotton knit shirts and blouses, Category 338/339 are, due to market disruption, threatening to impede the orderly development of trade in these products. The Committee is soliciting public comments to assist it in considering this issue and in determining whether safeguard action is appropriate.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, ''due to market disruption, threatening to impede the orderly development of trade in these products'', it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, in the context of this request, provide China with a detailed factual statement showing (1) the existence of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request.

On April 4, 2005, the Committee decided, on its own initiative, to consider whether imports of Chinese origin cotton knit shirts and blouses, Category 338/339 are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. See 68 FR 27787, May 21, 2003; 68 FR 494440, August 18, 2003.

The Committee is soliciting public comments on this matter. It invites the public to provide information and analyses to assist the Committee in considering whether market disruption exists, and, if so, the role of imports from China in that disruption. Such information may include the following: recent and historical data regarding the U.S. market for cotton knit shirts and blouses (including import and U.S. production data); a description of how, if at all, Chinese origin cotton knit shirts and blouses have affected the domestic industry, such as the effects of imports from China on prices in the United States; and any other pertinent information. Any member of the public who provides information to the Committee should also indicate the sources from which information provided was obtained.

In providing comments, the public may wish to consider the following data which are available at website: **http://otexa.ita.doc.gov**:

Category 338/339, Cotton knit shirts and blouses (1,000 dozen)

Period	Imports from the World	Imports from China	China's Share of Imports (%)
2002	265,158	2,848	1.1
2003	309,038	2,602	0.8
2004	322,212	2,816	0.9
Year-to-date March 2004	83,663	518	0.6
Year-to-date March 2005 [1]	98,493	7,040	7.1
Year-ending March 2004	310,814	2,448	0.8
Year-ending March 2005 [1]	337,042	9,338	2.8

[1] Includes preliminary data for 2005.

For purposes of clarification, the Committee notes this is not a solicitation for comments regarding any possible ''threat'' of market disruption.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton knit shirts and blouses, Category 338/339 are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing such market disruption in accordance with the Accession Agreement and with the Committee's procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–7254 Filed 4–06–05; 2:34 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments Regarding Possible Safeguard Action on Imports from China of Cotton and Man-Made Fiber Underwear

April 6, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments regarding possible safeguard action on imports from China of cotton and man-made fiber underwear, Category 352/652.

SUMMARY: The Committee has decided, on its own initiative, to consider whether imports of Chinese origin cotton and man-made fiber underwear, Category 352/652 are, due to market disruption, threatening to impede the orderly development of trade in these products. The Committee is soliciting public comments to assist it in considering this issue and in determining whether safeguard action is appropriate.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, ''due to market disruption, threatening to impede the orderly development of trade in these products'', it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, in the context of this request, provide China with a detailed factual statement showing (1) the existence of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered

during the first 12 months of the most recent 14 months preceding the request.

On April 4, 2005, the Committee decided, on its own initiative, to consider whether imports of Chinese origin cotton and man-made fiber underwear, Category 352/652 are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. See 68 FR 27787, May 21, 2003; 68 FR 494440, August 18, 2003.

The Committee is soliciting public comments on this matter. It invites the public to provide information and analyses to assist the Committee in considering whether market disruption exists, and, if so, the role of imports from China in that disruption. Such information may include the following: recent and historical data regarding the U.S. market for cotton and man-made fiber underwear (including import and U.S. production data); a description of how, if at all, Chinese origin cotton and man-made fiber underwear have affected the domestic industry, such as the effects of imports from China on prices in the United States; and any other pertinent information. Any member of the public who provides information to the Committee should also indicate the sources from which information provided was obtained.

In providing comments, the public may wish to consider the following data which are available at website: **http://otexa.ita.doc.gov:**

Category 352/652, Cotton and man-made fiber underwear (1,000 dozen)

Period	Imports from the World	Imports from China	China's Share of Imports (%)
2002	242,402	4,446	1.8
2003	255,977	5,394	2.1
2004	268,287	5,211	1.9
Year-to-date March 2004	57,451	1,256	2.2
Year-to-date March 2005 [1]	63,769	5,125	8.0
Year-ending March 2004	254,897	5,570	2.2
Year-ending March 2005 [1]	274,605	9,080	3.3

[1] Includes preliminary data for 2005.

For purposes of clarification, the Committee notes this is not a solicitation for comments regarding any possible ''threat'' of market disruption.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber underwear, Category 352/652 are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing such market disruption in accordance with the Accession Agreement and with the Committee's procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–7255 Filed 4–06–05; 2:34 pm]

BILLING CODE 3510–DS

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments Regarding Possible Safeguard Action on Imports from China of Cotton Trousers

April 6, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments regarding possible safeguard action on imports from China of cotton trousers, Category 347/348.

SUMMARY: The Committee has decided, on its own initiative, to consider whether imports of Chinese origin cotton trousers, Category 347/348 are, due to market disruption, threatening to impede the orderly development of trade in these products. The Committee is soliciting public comments to assist it in considering this issue and in determining whether safeguard action is appropriate.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (Accession Agreement) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, ''due to market disruption, threatening to impede the orderly development of trade in these products'', it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, in the context of this request, provide China with a detailed factual statement showing (1) the existence of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request.

On April 4, 2005, the Committee decided, on its own initiative, to consider whether imports of Chinese origin cotton trousers, Category 347/348 are, due to the existence of market disruption, threatening to impede the orderly development of trade in these products. See 68 FR 27787, May 21, 2003; 68 FR 494440, August 18, 2003.

The Committee is soliciting public comments on this matter. It invites the public to provide information and analyses to assist the Committee in considering whether market disruption exists, and, if so, the role of imports from China in that disruption. Such information may include the following: recent and historical data regarding the U.S. market for cotton trousers (including import and U.S. production data); a description of how, if at all, Chinese origin cotton trousers have affected the domestic industry, such as the effects of imports from China on prices in the United States; and any other pertinent information. Any member of the public who provides information to the Committee should also indicate the sources from which information provided was obtained.

In providing comments, the public may wish to consider the following data which are available at website: **http://otexa.ita.doc.gov**:

Category 347/348, Cotton trousers (1,000 dozen)

Period	Imports from the World	Imports from China	China's Share of Imports (%)
2002	140,305	2,787	2.0
2003	154,903	2,476	1.6
2004	149,307	2,184	1.5
Year-to-date March 2004	41,032	406	1.0
Year-to-date March 2005 [1]	47,860	6,583	13.8
Year-ending March 2004	151,619	2,026	1.3
Year-ending March 2005 [1]	156,134	8,361	5.4

[1] Includes preliminary data for 2005.

For purposes of clarification, the Committee notes this is not a solicitation for comments regarding any possible ''threat'' of market disruption.

Comments may be submitted by any interested person. Comments must be received no later than May 9, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton trousers, Category 347/348 are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing such market disruption in accordance with the Accession Agreement and with the Committee's procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–7256 Filed 4–6–05; 2:34 pm]

BILLING CODE 3510–DS

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Senior Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP) of the Corporation for National and Community Service, published in 69 FR 16527–16529, March 30, 2004.

DATES: These guidelines are effective as of March 1, 2005.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, Peter L. Boynton, Senior Program Officer, Senior Corps, 1201 New York Avenue, NW., Washington, DC 20525, by telephone at (202) 606–5000, ext. 554, or e-mail: *seniorfeedback@cns.gov.*

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 70 FR 8373–8375, February 18, 2005. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels (See attached list of High Cost Areas). The level of eligibility is rounded to the next higher multiple of $5.00

In determining income eligibility, consideration should be given to the following, as set forth in 45 CFR 2551–2553 dated October 1, 1999, as amended per the **Federal Register**, Vol. 67, No. 188, Friday, September 27, 2002, Vol. 69, No.72, Wednesday, April 14, 2004, and Vol. 69, No. 75, Monday, April 19, 2004.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party, and must not exceed 50 percent of the applicable Corporation income guideline.

Annual income is counted for the past 12 months, for serving SCP and FGP volunteers, and is projected for the subsequent 12 months, for applicants to become SCP and FGP volunteers, and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors must count the value of shelter, food, and

clothing, if provided at no cost to the applicant, enrollee or spouse. Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs:

2005 FGP/SCP INCOME ELIGIBILITY LEVELS

[Based on 125 percent of DHHS poverty guidelines]

States	Family units of			
	One	Two	Three	Four
All, except High Cost Areas, Alaska & Hawaii	$11,965	$16,040	$20,115	$24,190

For family units with more than four members, add $4,075 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

2005 FGP/SCP INCOME ELIGIBILITY LEVELS FOR HIGH COST AREAS

[Based on 135 percent of DHHS poverty guidelines]

States	Family units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$12,920	$17,325	$21,725	$26.125
Alaska	16,135	21,645	27,015	32,660
Hawaii	14,865	19,930	24,990	30,055

For family units with more than four members, add: $4,405 for all areas, $5,510 for Alaska, and $5,065 for Hawaii, for each additional member.

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget)

Alaska

(All Locations)

California

Inyo Mono County
Los Angeles/Compton/San Gabriel/Long Beach/Hawthorne (Los Angeles County)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County)
Santa Cruz/Watsonville (Santa Cruz County)
Santa Rosa/Petaluma (Sonoma County)
San Diego/El Cajon (San Diego County)
San Jose/Los Gatos (Santa Clara County)
San Francisco/San Rafael (Marin County)
San Francisco/Redwood City (San Mateo County)
San Francisco (San Francisco County)
Oakland/Berkeley (Alameda County)
Oakland/Martinez (Contra Costa County)
Anaheim/Santa Ana (Orange County)
Oxnard/Ventura (Ventura County)

Connecticut

Stamford (Fairfield)

District of Columbia/Maryland/Virginia

District of Columbia and surrounding Counties in Maryland and Virginia.
MD Counties: Anne Arundel, Calvert, Charles, Cecil, Frederick, Howard, Montgomery, Prince George's, and Queen Anne's Counties
VA Counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City

Hawaii

(All Locations)

Illinois

Chicago/Des Plaines/Oak Park/Wheaton/Woodstock (Cook, DuPage and McHenry Counties)
Lake County

Massachusetts

Barnstable (Barnstable)
Edgartown (Dukes)
Boston/Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties)
Worcester (Worcester City)
Brockton/Wellesley/Braintree/Boston (Norfolk County)
Dorchester/Boston (Suffolk County)
Worcester (City) (Worcester County)

New Jersey

Bergen/Passaic/Patterson (Bergen and Passaic Counties)
Jersey City (Hudson)
Middlesex/Somerset/Hunterdon (Hunterdon, Middlesex and Somerset Counties)
Monmouth/Ocean/Spring Lake (Monmouth and Ocean Counties)
Newark/East Orange (Essex, Morris, Sussex and Union Counties)
Trenton (Mercer County)

New York

Nassau/Suffolk/Long Beach/Huntington (Suffolk and Nassau Counties)
New York/Bronx/Brooklyn (Bronx, King, New York, Putnam, Queens, Richmond and Rockland Counties)
Westchester/White Plains/Yonkers/Valhalla (Westchester County)

Ohio

Medina/Lorain/Elyria (Medina/Lorain County)

Pennsylvania

Philadelphia/Doylestown/West Chester/Media/Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties)

Washington

Seattle (King County)

Wyoming

(All Locations)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

2005 DHHS POVERTY GUIDELINES FOR ALL STATES

States	Family Units of			
	One	Two	Three	Four
All, except Alaska & Hawaii	$9,570	$12,830	$16,090	$19,350
Alaska	11,950	16,030	20,010	24,190
Hawaii	11,010	14,760	18,510	22,260

For family units with more than four members, add: $3,260 for all areas, $4,080 for Alaska, and $3,750 for Hawaii, for each additional member.

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to Sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: April 4, 2005.

Tess Scannell,

Director, Senior Corps.

[FR Doc. 05–6983 Filed 4–7–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0187]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DoD Acquisition Process (Solicitation Phase)

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through December 31, 2005. DoD proposes that OMB extend its approval for use through December 31, 2008.

DATES: DoD will consider all comments received by June 7, 2005.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0187, using any of the following methods:

- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0187 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available electronically on the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Information Collection in Support of the DoD Acquisition Process (Solicitation Phase), OMB Control Number 0704–0187.

Needs and Uses: This information collection requirement pertains to information that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. DoD uses this information to evaluate offers; determine whether the offered price is fair and reasonable; and determine which offeror to select for contract award. DoD also uses this information in determining whether to provide precious metals as Government-furnished material; whether to accept alternate preservation, packaging, or packing; and whether to trade in existing personal property toward the purchase of new items.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 330,718.

Number of Respondents: 5,608.

Responses Per Respondent: Approximately 6.

Annual Responses: 34,567.

Average Burden Per Response: 9.6 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to information, not separately covered by another OMB clearance, that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. In particular, the information collection covers the following DFARS requirements:

- *217.70, Exchange of Personal Property.* Section 217.7004, paragraph (a), of this subpart requires that solicitations that contemplate exchange (trade-in) of personal property, and application of the exchange allowance to the acquisition of similar property, must include a request for offerors to state prices for the new items being acquired both with and without any exchange allowance.
- *217.72, Bakery and Dairy Products.* Section 217.7201, paragraph (b)(2), of this subpart requires a contractor's list of cabinet equipment in the Schedule of the contract, when the contractor is required to furnish its own cabinets for dispensing milk from bulk containers.
- *217.74, Undefinitized Contract Actions.* Unless an exception in 217.7404–5 of this subpart applies, paragraph (b) of 217.7404–3 requires the contractor to submit a qualifying proposal in accordance with the definitization schedule of the undefinitized contract action. A ''qualifying proposal'' is defined in paragraph (c) of 217.7401 as a proposal containing sufficient information for DoD to do complete and meaningful analyses and audits of the information in the proposal and any other

information that the contracting officer has determined that DoD needs to review in connection with the contract.

• *217.75, Acquisition of Replenishment Parts.* Paragraph (d) of 217.7504 of this subpart permits contracting officers to include, in sole-source solicitations for replenishment parts, a provision requiring an offeror to supply, with its proposal, price and quantity data on any Government orders for the replenishment part issued within the most recent 12 months.

• *252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material.* Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: One based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.

• *252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country.* Paragraph (c) of this provision requires an offeror to provide a disclosure with its offer if the government of a terrorist country has a significant interest in the offeror, in a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.

• *252.211–7004, Alternate Preservation, Packaging, and Packing.* Paragraph (b) of this provision requires an offeror to submit information sufficient to allow evaluation of any alternate preservation, packaging, or packing proposed by the offeror.

• *252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside.* Paragraph (c)(2) of this clause requires that, upon request of the contracting officer, the offeror will provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

• *252.237–7000, Notice of Special Standards of Responsibility.* Paragraph (c) of this provision requires the apparently successful offeror, under a solicitation for audit services, to give the contracting officer evidence that it is licensed by the cognizant licensing authority in the State or other political jurisdiction where the offeror operates its professional practice.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05–7084 Filed 4–7–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 9, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 4, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: The Application for Grants for the Center for International Business Education Program.

Frequency: Awarded every four years.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden: Responses, 50. Burden Hours, 1,133.

Abstract: This Program authorizes grants to institutions of higher education to establish Centers for International Business Education.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2734. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. **PLEASE SPECIFY THE COMPLETE TITLE OF THE INFORMATION COLLECTION WHEN MAKING YOUR REQUEST.**

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–6999 Filed 4–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools-Alcohol and Other Drug

Prevention Models on College Campuses

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice of proposed priority and eligibility requirements.

SUMMARY: We propose a priority and eligibility requirements under the Alcohol and Other Drug Prevention Models on College Campuses grant

competition. We may use the priority and eligibility requirements for competitions in FY 2005 and later years.

DATES: We must receive your comments on or before May 9, 2005.

ADDRESSES: Address all comments about the proposed priority and eligibility requirements to Vera Messina, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E258, Washington, DC 20202–6450. If you prefer to send your comments through the Internet, please use the following address: *vera.messina@ed.gov*.

You must include the phrase ''Alcohol and Other Drug Prevention Models-Comments on FY 2005 Proposed Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Vera Messina (202) 260–8273 or Ruth Tringo (202) 260–2838.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the proposed priority and eligibility requirements. To ensure that your comments have maximum effect in developing the notice of final priority and eligibility requirements, we urge you to identify clearly whether your comment addresses the proposed priority or the eligibility requirements.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority and eligibility requirements. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and eligibility requirements in room 3E258, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Proposed Priority and Eligibility Requirements

We will announce the final priority and eligibility requirements in a notice in the **Federal Register**. We will determine the final priority and eligibility requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities or eligibility requirements subject to meeting applicable rulemaking requirements.

Background

Recent research confirms that the United States continues to have major problems associated with alcohol and other drug use on college campuses. Based on 2004 data from the Monitoring the Future study, approximately 39 percent of the Nation's college students engaged in heavy drinking (defined as five or more drinks in a row) in the previous two weeks. The Core Institute 2003 Statistics on Alcohol and Other Drug Use on American Campuses report found that nearly 71 percent of underage students used alcohol and more than 21 percent of all students used an illicit drug within the 30 days prior to taking the survey.

Survey data also indicate that drinking alcohol has, frequently, very negative consequences for college students. On the 2003 Core Institute survey, more than 32 percent of students reported that, in the year prior to the survey, they had gotten into an argument or fight as a result of their drinking, almost 30 percent reported that they had driven a car under the influence, almost 34 percent reported that they had missed a class because of their drinking, and almost 40 percent reported that they had done ''something I later regretted'' because of their drinking.

The Department of Education seeks to support projects that address high-risk drinking and drug use and that can become practical models for replication and adaptation in other college communities. The goals of this competition are to identify models of effective campus-based alcohol and other drug prevention programs and disseminate information about these programs to other colleges and universities where similar efforts may be adopted.

Proposed Priority

Under this priority the Department would provide funding to Institutions of Higher Education (IHEs) that have been implementing effective alcohol and other drug prevention programs on their campuses. An IHE that receives funding under this priority must identify, enhance, further evaluate, and disseminate information about an effective alcohol or other drug prevention program being implemented on its campus. To meet the priority, applicants must provide in their application—

(1) A description of an alcohol or other drug prevention program that has been implemented for at least two full academic years on the applicant's campus;

(2) Evidence of the effectiveness of the program on the applicant's campus;

(3) A plan to enhance and further evaluate the program during the project period; and

(4) A plan to disseminate information to assist other IHEs in implementing a similar program.

Proposed Eligibility Requirements

We propose that only institutions of higher education (IHEs) that offer an associate or baccalaureate degree will be eligible under this program. Additionally, to be eligible, an IHE must not have received an award under this grant competition (CFDA 84.184N) during the previous five fiscal years (fiscal years 2000 through 2004).

Executive Order 12866

This notice of proposed priority and eligibility requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority and eligibility requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority and eligibility requirements, we

have determined that the benefits of the proposed priority and eligibility requirements justify the costs.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html*.

(Catalog of Federal Domestic Assistance Number: 84.184N Office of Safe and Drug-Free Schools-Alcohol and Other Drug Prevention Models on College Campuses)

Program Authority: 20 U.S.C. 7131.

Dated: April 5, 2005.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. 05–7085 Filed 4–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Draft Section 3116 Determination for Salt Waste Disposal at the Savannah River Site; Correction

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability; correction.

SUMMARY: The Department of Energy (DOE) published in the **Federal Register** on Friday, April 1, 2005, a notice of availability of a draft section 3116 determination for the disposal of separated, solidified, low-activity salt waste at the Savannah River Site (SRS) near Aiken, South Carolina. The notice contained an incorrect internet address. As a result, the period for submitting public comments will be extended.

Correction

In the **Federal Register** of April 1, 2005, Vol. 70, on page 16809, in the third column, correct the **DATES** heading to read:

DATES: The comment period will end on May 20, 2005. Comments received after this date will be considered to the extent practicable.

In the **ADDRESSES** heading, 3rd line, the Internet address is corrected to read: *http://apps.em.doe.gov/swd*.

Issued in Washington, DC on April 4, 2005.

Charles Anderson,

Environmental Management.

[FR Doc. 05–7027 Filed 4–7–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–72–000]

Dynegy Midwest Generation, Inc.; Notice of Institution of Proceeding and Refund Effective Date

April 1, 2005.

On March 25, 2005, the Commission issued an order initiating a proceeding in Docket No. EL05–72–000 under section 206 of the Federal Power Act concerning the continued justness and reasonableness of Dynegy Midwest Generation, Inc.'s previously-accepted rate schedule for reactive power services. *Dynegy Midwest Generation, Inc.* 110 FERC ¶ 61,358 (2005).

The refund effective date in Docket No. EL05–72–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1628 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–557–000 and ER05–557–001]

Grant Energy, Inc.; Notice of Issuance of Order

April 1, 2005.

Grant Energy, Inc. (Grant) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for purchase and sale of electricity at market-based rates. Grant also requested waiver of various Commission regulations. In particular, Grant requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Grant.

On March 30, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Grant should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is April 29, 2005.

Absent a request to be heard in opposition by the deadline above, Grant is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Grant, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Grant's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC

20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1630 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–242–000]

Great Lakes Gas Transmission Limited; Notice of Proposed Changes in FERC Gas Tariff

April 1, 2005.

Take notice that on March 24, 2005, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2005:

Third Revised Sheet No. 50B
Eighth Revised Sheet No. 84
Fourth Revised Sheet No. 86A

Great Lakes states that these tariff sheets are being filed to remove the tariff provision implementing the CIG/Granite State discount policy. Great Lakes further states that none of the proposed changes will affect any of Great Lakes currently effective rates and charges.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1625 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–78–000]

New York Independent System Operator, Inc.; Notice of Institution of Proceeding and Refund Effective Date

April 1, 2005.

On March 25, 2005, the Commission issued an order initiating a proceeding in Docket No. EL05–78–000 under section 206 of the Federal Power Act concerning the continued justness and reasonableness of New York Independent System Operator, Inc.'s previously accepted rate filing with respect to Long Island Power Authority's collection of State taxes from municipal entities and its double collection for transmission losses. *New York Independent System Operator, Inc.* 110 FERC ¶ 61,359 (2005).

The refund effective date in Docket No. EL05–78–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1629 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–564–000]

Ramco Generating One, Inc.; Notice of Issuance of Order

April 1, 2005.

Ramco Generating One, Inc. (Ramco) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for wholesale sales of energy, capacity and ancillary services at market-based rates. Ramco also requested waiver of various Commission regulations. In particular, Ramco requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Ramco.

On March 31, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Ramco should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is May 2, 2005.

Absent a request to be heard in opposition by the deadline above, Ramco is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Ramco, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Ramco's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room,

888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1631 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–53–000]

Southern Company Services, Inc.; Notice of Institution of Proceeding and Refund Effective Date

April 1, 2005.

On March 25, 2005, the Commission issued an order initiating a proceeding in Docket No. EL05–53–000 under section 206 and 307 of the Federal Power Act to provide Southern Company Services with an opportunity to explain to the Commission in a paper hearing: (1) Whether it is currently assessing operations and maintenance (O&M) charges to its customers, (2) whether its O&M rates for these interconnection agreements are properly on file with the Commission, (3) whether the rates (if they are on file) are just and reasonable, and (4) what is the appropriate remedy if Southern is collecting O&M charges contrary to the FPA. *Southern Company Services, Inc.* 110 FERC ¶61,362 (2005).

The refund effective date in Docket No. EL05–53–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1626 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–64–000]

Westar Energy, Inc.; Notice of Institution of Proceeding and Refund Effective Date

April 1, 2005.

On March 23, 2005, the Commission issued an order initiating a proceeding in Docket No. EL05–64–000 under section 206 of the Federal Power Act concerning the justness and reasonableness of Westar Energy, Inc.'s (Westar) market-based rates in Westar's, Midwest Energy and Aquila Networks-West Plains Kansas control area markets. *Westar Energy,* Inc. 110 FERC ¶ 61,316 (2005).

The refund effective date in Docket No. EL05–64–000, established pursuant to section 206 of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register.**

Magalie R. Salas,

Secretary.

[FR Doc. E5–1627 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–50–000]

Colorado Interstate Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed Raton Basin 2005 Expansion Project

April 1, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Colorado Interstate Natural Gas in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the following proposed pipeline loops and above-ground facilities:

- Line 151B 20″ Expansion—1.9 miles of 20-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion West—4.8 miles of 16-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion Middle—30.3 miles of 16-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion East—34.3 miles of 16-inch-diameter pipeline in Baca County, Colorado;
- Line 10C 24″ Expansion—23.6 miles of 24-inch-diameter pipeline in Baca County, Colorado and Morton County, Kansas;
- Line 12B 24″ Expansion—7.2 miles of 24-inch-diameter pipeline in Texas County, Oklahoma; and
- 1,775 horsepower of additional compression at the Beaver Compressor Station on Line 12A in Beaver County, Oklahoma.

The purpose of the proposed facilities would be to provide additional pipeline takeaway capacity to natural gas producers in the Raton Basin.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal agencies and interested public interest groups, individuals, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.
- Reference Docket No. CP05–050–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 2, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions

on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–1634 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–365–000]

Dominion Transmission, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Northeast Storage Project

March 31, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Dominion Transmission, Inc. (DTI) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas pipeline and appurtenant facilities including:

1. Development of the Quinlan Storage Field from a nearly depleted production reservoir by drilling four new gas storage wells, and converting a production well to an observation well, and converting a test well to an injection/withdrawal well in Cattaraugus County, New York;

2. Construction of the new 21.3-mile-long, 20-inch-diameter TL–527 Pipeline in McKean and Potter Counties, Pennsylvania, and Cattaraugus County, New York;

3. Construction of the new 0.9-mile-long, 8-inch-diameter LN–2471–S Pipeline in Potter County, Pennsylvania;

4. Construction of the new 0.1-mile-long, 8-inch-diameter LN–15 CHG–1 Pipeline in Potter County, Pennsylvania;

5. Construction of the new 0.7-mile-long, 16-inch-diameter, QL–1 Pipeline in Cattaraugus County, New York;

6. Construction of five new 8-inch-diameter well pipelines (QL–3, QL–4, QL–5, QL–6, and QL–7) totaling 0.11 mile in Cattaraugus County, New York;

7. Construction of the new 0.5-mile-long (TL–533) and 0.1-mile-long (TL–534), 16-inch-diameter pipelines in Lewis County, West Virginia;

8. Construction of the new Sharon Measuring and Regulating (M&R) Facility in Potter County, Pennsylvania;

9. Relocation of the existing Wolcott M&R Facility in Potter County, Pennsylvania from MP 0.0 of the LN–15 Pipeline segment (see below) proposed for abandonment to about MP 2.3 of the proposed TL–527 Pipeline;

10. Replacement of orifice meters with ultrasonic meters at the Leidy Transco 1 M&R Facility in Clinton, County, Pennsylvania;

11. Construction of the new 4,740 hp Quinlan Compressor Station in Cattaraugus County, New York; and

12. Construction of the new 3,550 hp Wolf Run Compressor Station in Lewis County, West Virginia.

In addition, DTI proposed to abandon in place:

1. 1.76 miles of the existing 8-inch-diameter LN–15 Pipeline in Potter County, Pennsylvania; and

2. 0.1 mile of the existing 8-inch-diameter LN–250–S Pipeline in Potter County, Pennsylvania.

The purpose of the Northeast Storage Project is to provide additional storage of 9.4 Bcf of gas and additional winter season firm transportation of 163,017 dekatherms per day.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to cooperating agencies, State agencies, a public interest group and a local newspaper. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 3, PJ11.3.
- Reference Docket No. CP04–365–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 30, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1638 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 1, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New minor license.

b. *Project No.:* 2153–012.

c. *Date Filed:* April 30, 2003.

d. *Applicant:* United Water Conservation District.

e. *Name of Project:* Santa Felicia Hydroelectric Project.

f. *Location:* On the Piru Creek in Ventura County, California. The project affects 174.5 acres of Federal land within the Los Padres and Angeles National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Dana Wisehart, United Water Conservation District, 106 North Eighth Street, Santa Paula, CA 93060.

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434 or *kenneth.hogan@ferc.gov.*

j. *Deadline for Filing Motions To Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Santa Felicia Project consists of: (1) A 200-foot-tall, 1200-foot-long earth fill dam; (2) an 88,000 acre-foot reservoir; (3) an ungated spillway and associated works, (4) a powerhouse with two units having a total installed capacity of 1,434-kilowatts and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,300 megawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1632 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2503–085.

c. *Date Filed:* March 3, 2005.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxaway Project.

f. *Location:* Lake Keowee is located in Oconee County, South Carolina. This project does not occupy any Tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC 28201–1006; (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* April 29, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2503–085) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Keowee-Toxaway Hydroelectric Project, has requested Commission authorization to lease to the Waterford Communities Owners Association and Crescent Communities, S.C., LLC 6.54 acres of project lands for a Commercial/Residential Marina. The Waterford Community is located on Lake Keowee in Oconee County. The marina would consist of: (1) Three cluster docks that accommodate a total of twenty-four boats and one cluster dock that accommodates six boats for Waterford Ridge; (2) one cluster dock that accommodates fourteen boats and two cluster docks that accommodate eight boats each for Waterford Farms and; (3) nine cluster docks that accommodate ten boats each for Waterford Pointe. In total, one hundred and fifty boats would be accommodated. Duke also seeks authorization to approve the irrigation and boat pump-out facilities associated with this marina. The water withdrawal needs are expected to be 8,400 gallons per day. Duke also seeks authorization to allow the stabilization of 2,803 feet of shoreline with rip-rap.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1635 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12462–000]

Indian River Power Supply, LLC; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

March 31, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* 5–MW Exemption.

b. *Project No.:* 12462–000.

c. *Date Filed:* July 28, 2003.

d. *Applicant:* Indian River Power Supply, LLC.

e. *Name of Project:* Indian River.

f. *Location:* On the Westfield River, in the Town of Russell, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Peter B. Clark, P.O. Box 149, Hamilton, Massachusetts 01936.

i. *FERC Contact:* Michael Spencer, (202) 502–6093, *michael.spencer@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All Documents (Original and Eight Copies) Should be Filed With: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted and is now ready for environmental analysis.

l. *Description of Project:* The Indian River Project would consist of: (1) The existing 30-foot-high, 425-foot-long Russell dam with flashboards; (2) a 14.11 acre reservoir; (3) a rackhouse for intake of the reservoir flow; (4) two 7-foot-diameter, 60-foot-long penstocks; (5) a powerhouse containing two generating units with a combined capacity of 700 kW and an estimated average annual generation of 3.2 GWh; (6) a 60-foot-long tailrace; (7) a 400-foot-long transmission line; and (8) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the exemption application. The application will be processed according to the schedule, but revisions to the schedule may be made as appropriate:

Action	Date
Notice availability of EA	Aug. 2005.
Ready for Commission Decision on Application.	Nov. 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1636 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No.:* 2232–485.

c. *Date Filed:* March 8, 2005.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC 28201–1006; (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for Filing Comments and or Motions:* April 29, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–485) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission authorization to lease to The Black Bear Development, Inc. 6.57 acres of project lands for a Commercial/Non-Residential Marina. The Black Bear Development is located on Lake James in McDowell County. The marina would consist of 14 cluster docks with one hundred and ninety eight (198) boat slips, one dry docking storage access ramp with a bulkhead, three fishing piers (one of which is designed for use by disabled persons), four boat slips for fueling (equipped with human waste pump-out equipment), and 2,505 linear feet of shoreline stabilization (rip rap).

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1637 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL05–6–000]

Establishing Reference Prices for Mitigation in Markets Operated by Regional Transmission Organizations and Independent System Operators; Notice Inviting Comments on the Establishment and Use of Reference Prices

April 1, 2005.

The Commission invites all interested persons to file comments addressing the roles of Regional Transmission Organizations (RTOs), Independent System Operators (ISOs) or their market monitors (or contractors) in establishing reference prices to mitigate bids in order to limit non-competitive results in wholesale electric markets. The comments may focus on particular geographic region(s) of the United States or upon energy markets in general. A Commission staff document, which is appended to this notice as Attachment A, provides general background on ways that reference levels are calculated and how they are used.

The Commission is particularly interested in comments that address the following questions for RTOs and ISOs that use the conduct and impact approach to mitigation:

1. In practice: (a) When are reference prices used; (b) by whom are they developed; (c) what can be their effect, if any, on the wholesale market-clearing price and wholesale rates for electric energy; and (d) how often do they affect market-clearing prices?

2. In what ways do reference prices in the wholesale market function like bid caps, and in what ways are they like formula rates?

3. Under what circumstances do RTOs, ISOs, their market monitors, or their consultants use discretion in setting reference prices? What is the nature of the discretion used? Is their discretion within the parameters prescribed in the RTO or ISO's Commission-approved, filed tariff? Is discretion necessary in determining reference prices? If so, under what circumstances is discretion necessary? Can reference prices be developed without discretion on the part of the RTO, ISO or market monitor?

a. If RTOs, ISOs, their market monitors, or their consultants exercise discretion within the parameters prescribed in the RTO or ISO's Commission-approved, filed tariff, is such discretion an impermissible delegation of the Commission's authority or is it a permissible implementation of a Commission-approved tariff? With respect to possible impermissible delegations of authority, does it make a difference if it is the RTO, ISO or an internal market monitor that exercises discretion within the parameters of a Commission-approved, filed tariff, or if it is an external market monitor or other consultant that exercises such discretion?

b. How often do RTOs, ISOs and their market monitors consult with individual market participants to determine the appropriate reference prices(s) for that market participant's unit(s)? How is the consultation process carried out? Is this consultation process appropriate?

c. How do RTOs, ISOs and their market monitors resolve disagreements with market participants about methods used to determine their individual reference prices, or about the data used to calculate their reference prices?

4. Is there a reason why reference prices, once set, would need to be adjusted quickly?

5. How often are reference prices set based on the market monitor or RTO/ISO's estimate of a unit's generating costs, compared to other methods of calculating reference prices?

6. To the extent that the RTO, ISO or market monitor may affect the market-clearing price at one or more locations and time intervals by determining reference prices, is there a better system that can be employed to mitigate bids?

a. Should some method other than reference prices within a conduct and impact approach to mitigation be used? If so, what method? Would this alternative method involve discretion on the part of the market monitor, ISO or RTO?

b. Reference prices could be developed by the market monitor, but submitted to the Commission for its approval. Should reference prices be set in that manner?

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and will be available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 2, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1633 Filed 4–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20040583, ERP No. D–BLM–J65433–WY, Rawlins Field Office Planning Area Resource Management Plan, Addresses the Comprehensive Analysis of Alternatives for the Planning and Management of Public Land and Resource Administered by (BLM), Albany, Carbon, Laramie, and Sweetwater Counties, WY.

Summary: EPA expressed environmental concerns regarding potential impacts to ecosystem processes, air quality, water quality, and wildlife habitat. EPA requests that the Final EIS disclose water quality impacts to aquatic resources more clearly and quantitatively, specifically in grazing allotments needing preservation of riparian habitat and water quality. Rating EC2.

EIS No. 20050026, ERP No. D–BIA–F60007–WI, Beloit Casino Project, To Expand the Tribal Governmental Revenue Base, St. Croix Chippewa Indians of Wisconsin and Bad River Band of the Lake Superior Tribe of Chippewa Indians, Rock County, WI.

Summary: EPA expressed concerns regarding the construction and operation of the proposed casino project and cumulative noise and air impacts from the proposed I–90 highway reconfiguration. EPA requested that these issues be evaluated in the Final EIS along with mitigation for noise and light pollution from increased night time traffic, and evaluation of the use of native vegetation in landscaping for energy and water conservation. Rating EC2.

EIS No. 20050032, ERP No. D–AFS–D65049–WV, Fernow Experimental Forest, To Continue Long-Term Research and Initiate New Research, Involving Removal of Trees, Prescribed Burning, Stem Injection of Selected Trees, Control Invasive Plant Species, Northeastern Research Station, Parson, Tucker County, WV.

Summary: EPA expressed environmental concerns regarding impacts to water quality and riparian resources and requested more specific information on herbicide treatments, especially related to overstory trees to control invasive plants. The Final EIS should address stream monitoring to assess potential impacts that may result from the proposed actions as well as how the public and wildlife will be protected from prescribed fire treatments. Rating EC2.

EIS No. 20050047, ERP No. D–BIA–C60005–NY, Stockbridge-Munsee Casino Project, Proposes To Address the Tribe's Economic Development, Bands of Mohican Indians of Wisconsin (the Tribe), NPDES Permit and U.S. Army COE Section 404 Permit, Town of Thompson, Sullivan County, NY.

Summary: EPA expressed concerns regarding indirect and cumulative impacts on new water and sewer lines, traffic and air quality of the five casinos expected to be built in Sullivan County and the casino's solid waste disposal. EPA requested that these issues be evaluated in the Final EIS along with a detailed wetlands mitigation and monitoring plan. Rating EC2.

EIS No. 20050074, ERP No. D–NAS–E12007–FL, New Horizons Mission to Pluto, Continued Preparations and Implementation to Explore Pluto and Potentially the Recently Discovered Kuiper Belt, Cape Canaveral Air Force Station, FL.

Summary: EPA has no objections regarding this launch. Rating LO.

EIS No. 20050043, ERP No. DS–FHW–J40166–UT, US 6 Highway Project, Improvements from Interstate 15 (I–15) in Spanish Fork to Interstate (I–70) near Green River, New Information, Funding, Right-of-Way Permit and US Army COE Section 404 Permit, Utah, Wasatch, Carbon, and Emery Counties, UT.

Summary: EPA expressed concerns due to impaired waters in the project area. Rating EC1.

EIS No. 20050002, ERP No. DS–NPS–L65264–WA, Elwha River Ecosystem Restoration Implementation Project, Update Information, Olympic Peninsula, Challam County, WA.

Summary: EPA has no objections to the proposed action. Rating LO.

EIS No. 20050007, ERP No. D2–FHW–H40397–MO, Interstate 70 Corridor Improvements, Section of Independent Utility #7 , a 40-Mile Portion of the I–70 Corridor from just West of Route 19 (milepost 174) to Lake St. Louis Boulevard (milepost 214) Montgomery, Warren, St. Charles Counties, MO.

Summary: While EPA has no objection to the proposed action, it did request clarification on wetlands issues. Rating LO.

Final EISs

EIS No. 20050017, ERP No. F–NOA–A91070–00, Atlantic Herring Fishery Management Plan, Minimizing Impacts on Essential Fish Habitat of Any Species, Gulf of Maine—Georges Bank, ME, NH, MA, CT and RI.

Summary: EPA expressed a lack of objections to the DEIS due to the overall benefits of the proposed action. Based on our review of the FEIS, we found that our issues were addressed.

EIS No. 20050027, ERP No. F–BLM–L65462–AK, Northeast National Petroleum Reserve Alaska Amended Integrated Activity Plan, To Amend 1998 Northeast Petroleum Reserve, To Consider Opening Portions of the BLM-Administrated Lands, North Slope Borough, AK.

Summary: EPA expressed environmental objections given that the selected alternative is likely to have more adverse impacts to surface resources and subsistence communities. EPA recommends that BLM phase in leases in new, environmentally sensitive areas only after experimental mitigation measures are proven effective for areas currently available for leasing.

EIS No. 20050045, ERP No. F–AFS–K65307–AZ, Coconino, Kaibab, and Prescott National Forest, Integrated Treatment of Noxious and Invasive Weeds, Implementation, Coconino, Mojave, and Yavapai Counties, AZ.

Summary: The Final EIS addressed EPA's concerns about impacts to drinking water from herbicide applications with the addition of mitigation measures.

EIS No. 20050057, ERP No. F–AFS–J65303–MT, Bridger Bowl Ski Area, Permit Renewal and Master Development Plan Update, Implementation, Special Use Permit and COE Section 404 Permit, Gallatin National Forest, in the City of Bozeman, MT.

Summary: EPA continues to express environmental concerns regarding impacts to wildlife habitat.

EIS No. 20050065, ERP No. F–AFS–J65389–MT, North Belts Travel Plan and the Dry Range Project, Provision

of Motorized and Non-motorized Recreation, Helena National Forest, Broadwater, Lewis and Clark, and Meagher Counties, MT.

Summary: EPA continues to have environmental concerns regarding erosion, habitat damage and adverse impacts to wildlife security from motorized uses as well as the need for an effective monitoring and adaptive management program for travel management.

EIS No. 20050070, ERP No. F–FHW–G40177–LA, Kansas Lane Connector Project, Construction between U.S. 90 (Desiard Street) and U.S. 165 and the Forsythe Avenue Extension, US Army COE Section 10 and 404 Permits Issuance, City of Monroe, Quachita Parish, LA.

Summary: EPA has no objections to the proposed project.

EIS No. 20050009, ERP No. FS–NOA–A91063–00, Monkfish Fishery Management Plan (FMP) Amendment 2, Implementation, Proposes Measures to Address a Wide Range of Management Issues, New England and Mid-Atlantic.

Summary: EPA has no objection to the proposed action.

EIS No. 20050040, ERP No. FS–AFS–J02027–UT, Table Top Exploraory Oil and Gas Wells, New Information from the Approval 1994 Final EIS, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary: No formal comment letter was sent to the preparing agency.

Dated: April 5, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–7040 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6662–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed March 28, 2005, through April 1, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 050139, Draft EIS, COE, AR, OK, Arkansas River Navigation Study, To Maintain and Improve the Navigation Channel in Order to Enhance Commercial Navigation on the McCellan Kerr Arkansas River Navigation System (MKARNS), Several Counties, AR and Several Counties, OK, Comment Period Ends: May 24, 2005, Contact: Renee Wright (501) 324–6139.

EIS No. 050140, Final EIS, FHW, NV, Boulder City/US 93 Corridor Transportation Improvements, Study Limits are between a western boundary on US 95 in the City of Henderson and an eastern boundary on US 93 west of downtown Boulder City, NPDES and US Army COE Section 404 Permits Issuance and Right-of Way Grant, Clark County, NV Wait Period Ends: May 9, 2005, Contact: Ted P. Bendure (775) 687–5322.

EIS No. 050141, Draft EIS, USA, FL, Eglin Air Force Base and Hurlburt Field Military Family Housing, Demolition, Construction, Renovation and Leasing (DCR&L) Program, Okaloosa County, FL, Comment Period Ends: May 23, 2005, Contact: Julia Cantrell (210) 536–3515.

EIS No. 050142, Draft EIS, NOA, CA, Programmatic—Montrose Settlements Restoration Program (MSRP) Draft Restoration Plan, To Restore Injured Natural Resources, Channel Islands, Southern California Bight including Baja California Pacific Islands, Orange County, CA, Comment Period Ends: May 23, 2005, Contact: William T. Hogarth (301) 713–1622.

EIS No. 050143, Draft EIS, FHW, LA, AR, I–69 Corridor—Section of Independent Utility (SIU) No. 14, Construction from Junction I–20 near Haughton, LA to US 82 near EI Dorado, AR, Bossier, Claiborne and Webster Parishes, LA and Columbia and Union Counties, AR, Comment Period Ends: May 30, 2005, Contact: William Farr (225) 757–7615.

EIS No. 050144, Draft EIS, FHW, IN, US–31 Kokomo Corridor Project, Transportation Improvement between IN–26 and US 35 Northern Junction, City of Kokomo and Center Township, Howard and Tipton Counties, IN, Comment Period Ends: May 23, 2005, Contact: Matt Fuller (317) 226–5234. This document is available on the Internet at: *http://www.us31kokomo.com*.

Amended Notices

EIS No. 050105, Draft EIS, AFS, MI, Huron-Manistee National Forests, Proposed Land and Resource Management Plan, Implementation, Several Counties, MI, Comment Period Ends: June 16, 2005, Contact: Jeff Pullen (231) 775–2421. Revision of **Federal Register** notice published on March 18, 2005: Correction to the State from WI to MI.

EIS No. 050136, Draft EIS, AFS, CO, Dry Fork Federal Coal Lease-by-Application (COC–67232), Leasing Additional Federal Coal Lands for Underground Coal Resource, Special-Use-Permits and US Army COE Section 404 Permit, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Comment Period Ends: May 16, 2005, Contact: Liane Mattson (970) 874–6697. Revision of **Federal Register** notice published on April 1, 2005: Correction to Telephone Number.

Dated: April 5, 2005.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 05–7041 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0012; FRL–7708–9]

Endocrine Disruptor Methods Validation Advisory Committee (EDMVAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a meeting of the Endocrine Disruptor Methods Validation Advisory Committe (EDMVAC) on April 26–28, 2005, in Washington, DC. This meeting, as with all EDMVAC meetings, is open to the public. Seating is on a first-come basis. The purpose of the meeting is to receive advice and input from the EDMVAC on: Steroidogenesis, Uterotrophic, Fish Screen Studies, and Amphibian Metamorphosis Assays.

DATES: The meeting will be held on Wednesday, April 26, 2005, from 12:30 p.m. to 5:30 p.m.; Thursday, April 27, 2005, from 8:30 a.m. to 5:30 p.m.; and Friday, April 28, 2005, from 8 a.m. to 12:15 p.m., eastern standard time.

Request to participate in the meeting must be received by EPA on or before April 21, 2005. To ensure proper receipt by EPA, it is imperative that you identify docket identification (ID) number OPPT–2005–0012 in the subject line on the first page of your request.

Individuals requiring special accommodations at the meeting, including wheelchair access, should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at RESOLVE, 1255 23rd St., NW., Suite 275, Washington, DC 20037.

Requests to participate in the meeting may be submitted by e-mail, telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Comments may be submitted electronically, by fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official (DFO), Office of Science Coordination and Policy (7203M), Office of Prevention, Pesticides and Toxic Substances (OPPTS), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8482; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with, or import pesticide chemicals and other substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p), and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2005–0012. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0282.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A meeting agenda, a list of EDMVAC members and information from previous EDMVS meetings are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How Can I Request to Participate in the Meeting or Submit Comments?

You may submit a request to participate in the meeting through e-mail, telephone, fax, or hand delivery/courier. We would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, we cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before April 21, 2005. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2005–0012 in the subject line on the first page of your request.

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVAC will have a period available during the meeting for public comment. It is the policy of the EDMVAC to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVAC expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

1. *Electronically*. If you submit an electronic request to participate in the meeting or comments as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your request or comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the request or comment and allows EPA to contact you in case EPA cannot read your request or comment due to technical difficulties or needs further information on the substance of your request or comment. EPA's policy is that EPA will not edit your request or comment, and any identifying or contact information provided in the body of a request or comment will be included as part of the request or comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your request or comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your request or comment.

i. *EPA Docket*. You may use EPA's electronic public docket *http://www.epa.gov/edocket/*, and follow the online instructions for submitting materials. Once in the system, select ''search,'' and then key in docket ID number OPPT–2005–0012. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your request.

ii. *E-mail*. Requests to participate in the meeting or comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2005–0012. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail request directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the request that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM by hand delivery, courier, or package service, such as Federal Express, to the person listed under **FOR FURTHER**

INFORMATION CONTACT. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption. Do not submit any disk or CD ROM through the mail. Disks and CD ROMs risk being destroyed when handled as Federal Government mail.

2. *Telephone or fax*. Telephone or fax your request to participate in the meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., Washington, DC. Attention: Docket ID Number OPPT–2005–0012. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

II. Background

In 1996, through enactment of FQPA, which amended the FFDCA, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of FACA, to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier 1 screens) and tests (Tier 2 tests) for determining whether a chemical substance may have an effect similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA chartered the Endocrine Disruptor Methods Validation Subcommmittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The EDMVS convened nine meetings between October 2001 and December 2003. In 2003, NACEPT recommended EDMVS become an Agency level 1 FACA Committee due to the complexity of the recommendations. The EDMVAC was chartered in 2004. The EDMVAC provides independent advice and counsel to the Agency on scientific and technical issues related to validation of the EDSP Tier 1 screens and Tier 2 tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate. EDMVAC and previous EDMVS meeting information and corresponding docket numbers are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/*. You may also go to the EPA Docket at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting materials.

III. Meeting Objectives for the April 26–28, 2005 Meeting

The objectives for the April 26–28, 2005 meeting (docket ID number OPPT–2005–0012) are to introduce the newly established EDMVAC Committee, review and discuss: Steroidogenesis (Tier 1 Assay), Uterotrophic (Tier 1 Assay, OECD), EPA Fish Screen Multi-Chemical Studies (Tier 1 Assay), OECD Fish Screen Phase 1B (Tier 1 Assay), Amphibian Metamorphosis Phase 1 Report and Phase 2 Draft Plan (Tier 1 Assay, OECD).

A list of the EDMVAC members and meeting materials are available at *http://www.epa.gov/scipoly/oscpendo/* and in the public docket.

List of Subjects

Environmental protection, Endocrine disruptors, Hazardous substances, Health, Safety.

Dated: April 1, 2005.

Clifford Gabriel,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–7043 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0017; FRL–7704–2]

Kasugamycin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0017, must be received on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0017. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0017.

3. *By hand delivery or courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0017. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition, as follows, proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition (PP) is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Arvesta Corporation as agent for Hokko Chemical Industry Co., Ltd.

PP 3E6579

EPA has received pesticide petition 3E6579 from Arvesta Corporation, 100 First St., Suite 1700, San Francisco, CA 94105 as agent for Hokko Chemical Industry Co. Ltd. 4–20, Nihonbashi Hongokucho 4 Chome, Chuo-Ku, Tokyo 103–8341, Japan, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of kasugamycin, 1L-1,3,4/2,5,6-1-deoxy-2,3,4,5,6-pentahydroxy-cyclohexyl-2-amino-2,3,4,6-tetradeoxy-4-(α-iminoglycino)-α-D-arabino-hexopyranoside, in or on the raw agricultural commodity fruiting vegetables (Crop Group 8) at 0.04 parts per million (ppm), tomato juice at 0.06 ppm, tomato puree at 0.06 ppm, and tomato paste at 0.25 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2). However, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of residues of kasugamycin in tomato was investigated using ^{14}C radiolabeled kasugamycin. Parent kasugamycin was the primary component in both fruit and foliage. The main metabolite in fruit, present at a maximum level of 0.01 ppm, was identified as kasugamycinic acid, resulting from the conversion of the iminomethyl function to a carboxylic acid. Additional investigation of extracts from foliage indicated the presence of:

i. 2-N-acetyl kasugamycin, formed by acylation of the primary amine.

ii. Kasuganobiosamine, formed by loss of the carboxylic acid function of kasugamycinic acid.

iii. Conjugates of kasugamycin and kasugamycinic acid.

However, of the minor metabolites found in the foliage, only the conjugates were observed in tomato fruit.

2. *Analytical method.* A practical analytical method for detecting and measuring levels of kasugamycin has been developed and validated in all appropriate agricultural commodities. This analytical method is suitable for monitoring of food with residues at the levels proposed for the tolerances. The limit of quantitation (LOQ) for this method is 0.04 ppm. An independent laboratory validation of the residue analytical method was successful.

3. *Magnitude of residues.* The number of field residue trials required for an import tolerance is based on the percent of total consumed crop commodity attributed to imports from countries where the product is or is intended to be registered for use on the crop. The number of trials may be reduced if a crop group tolerance is requested. Using this consideration, EPA determined that the residue field program should consist of three trials on bell pepper, three trials on non-bell pepper, and eight trials on tomato. Field residue trials in support of this import tolerance were conducted at sites representative of locations in which the product will be used on the intended crops with applications at the

maximum use rate for each crop. As a result of the field trials, the tolerance proposed for the fresh fruiting vegetables is 0.04 ppm. A tomato processing study was not conducted. However, using the detectable levels of kasugamycin residues in the tomato fruits, the expected levels of residues in tomato juice, tomato puree, and tomato paste were calculated using the maximum theoretical concentration factors from the harmonized test guideline OPPTS 860.1520 of 1.4, 1.4, and 5.5, respectively. As a result of these calculations, the following tolerances are proposed for tomato processing commodities: 0.06 ppm (tomato juice), 0.06 ppm (tomato puree), and 0.25 ppm (tomato paste).

B. Toxicological Profile

A full battery of toxicology testing including studies of acute, subchronic, chronic, oncogenicity, developmental, reproductive, and genotoxicity effects is available for kasugamycin. The acute oral toxicity, the only acute testing required for import tolerances, is low. Subchronic and chronic studies exhibit no-observed-effects-level (NOEL) values from a low 5 milligram/kilogram/day (mg/kg/day) (2–year chronic toxicity in dogs) to 135 mg/kg/day (13–week feeding study with mice). Kasugamycin is not oncogenic and weight-of-evidence indicates it is not genotoxic. There are no concerns of developmental or reproductive effects. The lowest chronic NOEL of 3 mg/kg/day is taken from the rabbit maternal toxicity in the developmental study.

1. *Acute toxicity*. The acute oral toxicity for kasugamycin (the only study required for import tolerances establishment) is very low. The acute oral Lethal Dose to 50% (LD_{50}) is greater than 5,000 mg/kg, which will gives kasugamycin a Toxicity Category IV.

2. *Genotoxicty*. Kasugamycin was negative in the following assays: Bacterial reverse mutation, Chinese hamster ovary (CHO), chromosomal aberration (*in vitro*), mammalian erythrocyte micronucleus, unscheduled DNA synthesis, *in vitro* mammalian cell gene mutation. Overall, it is unlikely that kasugamycin presents a genetic hazard.

3. *Reproductive and developmental toxicity*. Developmental effects of kasugamycin were studied in rats and rabbits and multi-generational effects on reproduction were studied in rats.

i. *Rat developmental*. In the developmental toxicity study conducted with rats the maternal NOEL is 40 mg/kg/day based on reduced body weight gain and food consumption. There were no developmental effects and the developmental NOEL is 1,000 mg/kg/day the highest dose tested.

ii. *Rabbit developmental*. In the developmental toxicity study conducted with rabbits the maternal NOEL is 3 mg/kg/day based on reduced body weight gain and food consumption, two abortions and one total litter loss. There were no developmental effects and the developmental NOEL is 10 mg/kg/day the highest dose tested.

iii. *Reproduction*. In the rat reproduction study the parental NOEL is 10 mg/kg/day based on decrease body weight. The reproductive NOEL is 50 mg/kg/day (based on increase length of time required for mating).

4. *Subchronic toxicity*. Subchronic toxicity studies have been conducted with kasugamycin in the rat, mouse, and dog.

i. *Rats*. Kasugamycin technical was tested in rats in a 13–week feeding study. Observations were altered blood biochemistry, elevated absolute and relative cecum weights, and increased relative kidney weights. Both males and females at the high dose increased their water consumption compared to controls. In addition, males in the 6,000 ppm group had an increase in eosinophilic bodies in the proximal tubule cells of the kidney and the females had an increase in foam cell aggregation in the lungs. Foam cells generally contained lipid droplets and may be derived from macrophage. The NOEL is 300 ppm (17.53 mg/kg/day in males and 22.33 mg/kg/day in females)

ii. *Mice*. A 13–week feeding study in mice was conducted. Effects included ulceration and inflammation of the anus, altered hematological, and clinical chemistry. Females in the 10,000 ppm group had a diffuse basophilia and hyperplasia of the epithelium of the proximal tubule of the kidney. Dilatation of the seminiferous tubules of males was observed in the high-dose group and sometimes associated with degeneration of the seminiferous epithelium. The NOEL is 1,000 ppm (135.4 mg/kg/day in males and 170.9 mg/kg/day in females).

iii. *Dog*. A 13–week oral toxicity study was conducted in beagle dogs. Effects included decreased food consumption and body weight gain, discolored feces, tongue lesions, swollen mouth, and excessive salivation. The NOEL is 300 ppm (10.59 mg/kg/day in males and 11.44 mg/kg/day in females).

5. *Chronic toxicity*. Kasugamycin has been tested in chronic studies with dogs, rats, and mice.

i. *Rats*. In a 24–month combined chronic/oncogenicity study in rats findings were increased cecum weights and kidney weights, increased brown pigment deposition in the kidney proximal tubules and an increased incidence of foam cell aggregation in the lungs. No significant increase in neoplastic lesions. The NOEL is 300 ppm (10.59 mg/kg/day in males and 11.44 mg/kg/day in females).

ii. *Mice*. Kasugamycin was administered in diet to mice for 78 weeks. Observations were lower absolute and relative spleen weights for males at 1,500 ppm. The NOEL is 300 ppm (34.94 mg/kg/day in males and 42.49 mg/kg/day in females)

iii. *Dog*. Kasugamycin was administered for 52 weeks to dogs. The administration of 3,000 ppm kasugamycin was associated with minimally higher urea nitrogen and creatinine, lower urine volume, and higher urine specific gravity. The NOEL is 1,000 ppm.

iv. *Carcinogenicity*. Kasugamycin did not produce carcinogenicity in adequately designed chronic studies with rats or mice. Arvesta Corporation anticipates that the cancer classification of kasugamycin will be ''E'' (no evidence of carcinogenicity for humans).

6. *Animal metabolism*. Following administration to the rodent, the majority of kasugamycin is excreted into the feces, a small amount was eliminated in the urine, and less than 0.1% of the radioactivity was retained in the carcass. Kasugamycin is not excreted in the bile and enterohepatic circulation of kasugamycin does not occur. There were no apparent sex related differences.

7. *Metabolite toxicology*. No metabolites of significant expected toxicity were identified in the animal metabolism study.

8. *Endocrine disruption*. Data from the subchronic studies indicate that there is no expected endocrine disruption effects.

C. Aggregate Exposure

1. *Dietary exposure*. Acute and chronic dietary analyses were conducted to estimate exposure to potential kasugamycin residues in or on the following crops: Fruiting vegetables using CARES software developed by CropLife and DietRisk™ TSG's software. Kasugamycin is not used in the United States so there is no need for water exposure analysis. In calculating the exposure the following assumptions were made: Tolerance level of residues, and 100% imported crops treated with kasugamycin.

2. *Food*—i. The acute dietary margin of exposure (MOE) estimates for kasugamycin residues in food at 99.9th percentile of females age 13–49 is higher

than 12,000 based on a NOEL of 3 mg/kg/day from the developmental toxicity study. The acute dietary exposure to kasugamycin for this group is less than 1% of the reference dose (RfD) which was defined as the NOEL from the developmental study in rabbits including an uncertainty factor of 100 (NOEL = 3 mg/kg/day, RfD = 0.03 mg/kg/day).

ii. Chronic dietary exposure to kasugamycin residues of females age 13–49 was less than 0.1% of the chronic RfD. The RfD was defined as the NOEL from the developmental study in rabbits including an uncertainty factor of 100 (NOEL = 3 mg/kg/day, RfD = 0.03 mg/kg/day).

These values are based on tolerance level residues and 100% imported crops treated with kasugamycin. These can be considered conservative values.

D. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanism of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way for most registered pesticides. However, the mode of action of kasugamycin differs substantially from those of other aminoglycoside antibiotics. Because kasugamycin acts at a different point in protein syntheses than that affected by other aminoglycoside antibiotics, cross-resistance between kasugamycin and other similar antibiotics is extremely unlikely. In addition, kasugamycin is active only against phytopathogenic fungi and bacteria. Because kasugamycin is not effective against common human or animal pathogens, it has never been employed as a human or veterinary-use antibiotic. For the same reason, there is essentially no possibility that use of kasugamycin as a plant protection agent can give rise to antibiotic resistance in human or animal pathogens.

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions of tolerance level residues and 100% of imported crops treated with kasugamycin, based on the completeness and reliability of the toxicity data, it is concluded that dietary exposure to proposed uses of kasugamycin will utilize less than 0.1% of the chronic RfD and less than 1% of the acute RfD for the females of childbearing age population group, the most sensitive group, and is likely to be much less, as more realistic data and models are developed. The MOE from the dietary exposure for the same group is higher than 12,000 and is likely to be higher, as more realistic data and models are developed. The Agency has no cause for concern if total acute residue contribution is less than 100% of the acute RfD, because the RfD represents the level at or below which daily exposure over a lifetime will not pose appreciable risk to human health. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from dietary exposure to residues of kasugamycin.

2. *Infants and children.* The toxicological database for evaluating pre- and post-natal toxicity for kasugamycin is complete with respect to current data requirements. There are no special pre- and post-natal toxicity for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 2-generation reproductive toxicity study in rats. In all cases there were no developmental and offspring toxicity effects at the maternal toxicity level. Using the conservative assumption described in Unit E.1., based on the completeness and reliability of the toxicity data, it is concluded that the exposure to the proposed uses of kasugamycin on imported crops will utilize at most 1.0% of the acute or chronic RfD. Therefore, there is a reasonable certainty that no harm will occur to infants and children from exposure to residues of kasugamycin.

F. International Tolerances

CODEX Maximum Residue Limits (MRLs) have not been established for kasugamycin in either tomato or peppers, and a joint meeting on pesticide residues (JMPR) review of kasugamycin residue data is not scheduled. Spain has established an MRL for kasugamycin in tomato, at 0.05 ppm. There are no existing MRLs for kasugamycin in pepper.

[FR Doc. 05–6848 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0074; FRL–7703–8]

Iprovalicarb; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0074, must be received on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0074. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0074. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0074. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0074.

3. *By hand delivery or courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0074. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience AG

PP 3E6578

EPA has received a pesticide petition (3E6578) from Bayer CropScience AG; 2 T.W. Alexander Drive; Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.581 by establishing a tolerance for residues of iprovalicarb in or on the raw agricultural commodity tomato at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of iprovalicarb was investigated in grapes, potatoes and tomatoes, and the metabolic pathway is similar in the three crops. The rate of degradation on plants is quite low, and the parent compound was always the major component, with quantitatively relevant metabolites formed only in potatoes. The metabolites observed in the potato were also observed in the rat. Therefore, iprovalicarb is the only residue of concern. Plant metabolism proceeds along three pathways:

i. Hydroxylation/glycosylation of parent at the 4-methyl group on the phenyl ring, followed by further conjugations.

ii. Cleavage of the amide group between the L-valine and *p*-methyl-phenethylamine moieties.

iii. Hydroxylation/glycosylation of parent at the phenyl-ring 3 position.

2. *Analytical method*. Iprovalicarb residues are quantified by reversed phase HPLC with Electrospray MS/MS-detection. The instrument response was linear over the range of 0.0005 to 0.26 ppm. For the analysis of iprovalicarb residues in tomatoes, the limit of quantification and the limit of detection were determined to be 0.02 ppm and 0.005 ppm, respectively. Iprovalicarb residue recoveries ranged from 81% to 98% for tomato samples fortified at 0.017 ppm and from 80% to 90% for tomato sampled fortified at 0.166 ppm.

3. *Magnitude of residues*. Twenty residues trials were conducted that are representative of tomatoes grown in countries that export tomato commodities to the United States. The maximum iprovalicarb residue in/on whole, unwashed tomatoes grown for exportation to the United States was 0.41 ppm. The average iprovalicarb residue in/on whole, unwashed tomatoes grown for exportation to the United States as fresh tomatoes and processed tomatoes was 0.12 ppm and 0.07 ppm, respectively. Washing of whole tomatoes reduces iprovalicarb residues by 56%. Iprovalicarb residues were reduced by 88%, 73% and 71% via processing of fresh, unwashed tomatoes to peeled fruit, juice and puree, respectively. The iprovalicarb residue concentration factor for tomato paste is 1.38. The theoretical maximum iprovalicarb residue in tomato paste is 0.56 ppm, (0.41 ppm x 1.38 = 0.56 ppm). Since tomato paste is a blended commodity and the average residue in/on tomatoes grown for export to the United States as processed tomatoes is

0.07 ppm, the anticipated iprovalicarb residue in tomato paste is only 0.10 ppm. (0.07 ppm x 1.38 = 0.10 ppm).

B. Toxicological Profile

OPPTS Harmonized Guideline 870.1100, Acute oral toxicity, LD_{50} 5,000 milligram/kilogram/body weight (mg/kg/bwt) is the only entry that did not appear in Table 1 of the final rule of August 22, 2002.

1. *Acute toxicity*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351) (FRL–7194–3).

2. *Genotoxicity*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351).

3. *Reproductive and developmental toxicity*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351).

4. *Subchronic toxicity*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351).

5.*Chronic toxicity*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351).

6. *Animal metabolism*. See Table 1 of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351).

7. *Metabolite toxicology*. The toxicity of *p*-methyl-phenethylamine, a rat, plant and soil metabolite, was investigated in two studies:

i. The acute oral LD_{50} in Wistar rats was determined to be in the range of 300 to 500 mg/kg/bwt.

ii. No mutagenic activity was observed in the Salmonella/microsome test. *p*-Methyl-phenethylamine was found at concentrations of <0.2% and has been determined to not be toxicologically significant.

8. *Endocrine disruption*. No endocrine disruption potential was observed in the 2–generation reproduction study, developmental toxicity studies, subchronic feeding studies, and chronic feeding studies.

C. Aggregate Exposure

1. *Dietary exposure*. There are no registered uses of iprovalicarb in the United States, and no registrations are pending. Dietary exposure to iprovalicarb in the United States is limited to residues in/on imported grape commodities and the proposed imported tomato commodities.

i. *Food*. Exposure to iprovalicarb residues in food is limited to imported grape and tomato commodities. U.S. consumption of fresh grapes, grape juice, raisins and wine that is from imported sources is estimated to be 35%, 43.3%, 7%, and 15%, respectively. The percent U.S. consumption of tomato commodities potentially treated with iprovalicarb that is from imported sources is estimated to be 13.4% for fresh tomatoes and 2.9% for processed tomatoes.

ii. *Drinking water*. Iprovalicarb is not registered for use in the United States. Therefore, there is no exposure to iprovalicarb through drinking water in the United States.

2. *Non-dietary exposure*. Iprovalicarb is not registered for use in the United States. Therefore, there is no non-dietary exposure to iprovalicarb in the United States.

D. Cumulative Effects

Iprovalicarb is a member of a new class of chemistry and does not have a mode of action that is common with other registered pesticides. Therefore, there are no cumulative effects.

E. Safety Determination

1. *U.S. population*. Iprovalicarb has low acute toxicity, so no acute safety determination is needed. EPA has previously determined that the chronic Population Adjusted Dose for iprovalicarb is 0.026 mg/kg/bwt/day and the uncertainty factor is 100. Based upon average residues in/on imported tomato commodities, and assuming that 100% of the tomato commodities that are imported from countries in which iprovalicarb is potentially used have been treated with iprovalicarb, the estimated chronic dietary risk based upon exposure of 50% of the reference population was estimated using CARES verison 1.3 to be 0.1% of the cPAD. The excess lifetime cancer risk was estimated using CARES version 1.3 to be 1.64×10^{-8}.

2. *Infants and children*. The population subgroup with the maximum estimated dietary exposure is children age 1 to 2 years old. For this subgroup, and using the same assumptions as listed for the U.S. population, the estimated chronic dietary risk is 0.5% of the cPAD.

F. International Tolerances

Currently, there is no CODEX maximum residue level (MRL) for iprovalicarb residues in/on tomatoes. Italy is the only country for which there currently is a registration for the use of iprovalicarb on tomatoes and for which the additional active ingredient included in the formulation for resistance management purposes also has a U.S. tolerance. Italy has established an MRL of 1.0 ppm for iprovalicarb residues in/on tomatoes.

[FR Doc. 05–7042 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0089; FRL–7706–8]

Flumioxazin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0089, must be received on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining

whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0089. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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C. How and to Whom Do I Submit Comments?

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1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0089. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID number OPP–2005–0089. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0089.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0089. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Interregional Research Project Number 4 (IR–4), and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR–4)

PP 4E6845

EPA has received a pesticide petition (4E6845) from Interregional Research Project Number 4 (IR–4), Rutgers, State University of New Jersey, 681 U.S. Highway No. 1 S. North New Brunswick, NJ 08902, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues of the herbicide chemical flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on strawberry at 0.10 parts per million (ppm). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of flumioxazin is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method*. Practical analytical methods for detecting and measuring levels of flumioxazin have been developed and validated in/on all appropriate agricultural commodities and respective processing fractions. The LOQ of flumioxazin in the methods is 0.02 ppm which will allow monitoring of food with residues at the levels proposed for the tolerances.

3. *Magnitude of residues*. Residue data on strawberry have been submitted which adequately support the requested tolerance.

B. Toxicological Profile

The toxicological profile for flumioxazin which supports this petition for tolerances was published in the **Federal Register** on March 31, 2004 (69 FR 16823)(FRL–7351–2).

C. Aggregate Exposure

1. *Dietary exposure*. Acute and chronic dietary analyses were conducted to estimate exposure to potential flumioxazin residues in/on the following crops: Peanuts, soybeans, and cottonseed oil (existing tolerances); grapes, almond, pistachio, and sugarcane, vegetable, tuberous and corm (Subgroup 1C), mint, and fruit, pome (Group 11) and fruit, stone (Group 12) (tolerances pending); asparagus, vegetable, bulb (Group 3), leaf petioles (Subgroup 4B), dried shelled peas and beans Subgroup 6C), vegetables, fruiting (Group 8), vegetables, cucurbit (Group 9), berries (Group 13), and nut, tree (Group 14)(tolerances to be proposed in the future); and strawberry (tolerances proposed in the current petition). The Cumulative and Aggregate Risk Evaluation System (CARES) Version 2.0 was used to conduct these assessments. These Tier I assessments used issued and proposed tolerances, default processing factors, and the assumption

of 100% crop treated. No adjustments were made for common washing, cooking or preparation practices. Exposure estimates for water were made based upon modeling (GENEEC 1.2).

i. *Food*—a. *Acute.* The acute dietary exposure estimate of flumioxazin residues in food at the 99.9th percentile for females 13–49 years old was calculated to be, at most, 21.9% of the acute population adjusted dose (a-PAD) with a margin of exposure (MOE) of 450. This is the only population subgroup with an identified acute toxicity endpoint. The a-PAD was defined as the NOEL from an oral developmental study in rats and includes an uncertainty factor of 100 to account for intra-species and inter-species variation (NOEL = 3 milligrams/kilogram body weight/day (mg/kg bwt/day), a-PAD = 0.03 mg/kg/day).

b. *Chronic dietary exposure.* The chronic dietary exposure estimate of flumioxazin residues in food at the 100th percentile was calculated to be, at most, 18.1% of the chronic population adjusted dose (c-PAD) with a MOE of 550. The population subgroup with the highest exposure was children 3–5 years old. The c-PAD was defined as the no observed effect level (NOEL) from a rat 2–year chronic/oncogenicity study and includes an uncertainty factor of 100 to account for intra-species inter-species variation (NOEL = 2 mg/kg bwt/day, c-PAD = 0.02 mg/kg/day).

ii. *Drinking water.* Since flumioxazin is applied outdoors to growing agricultural crops, the potential exists for the parent or its metabolites to reach ground or surface water that may be used for drinking water. Because of the physical properties of flumioxazin, it is unlikely that flumioxazin or its metabolites can leach to potable ground water. To quantify potential exposure from drinking water, surface water concentrations for flumioxazin were estimated using GENEEC 1.2. Because KOC could not be measured directly in adsorption-desorption studies because of chemical stability, GENEEC values representative of a range of KOC values were modeled. The simulation that was selected for these exposure estimates used an average KOC of 385, indicating high mobility. The peak GENEEC concentration predicted in the simulated pond water was 9.8 parts per billion (ppb). Using standard assumptions about body weight and water consumption, the acute exposure from this drinking water would be 0.00028 and 0.00098 mg/kg/day for adults and children, respectively. The 56–day GENEEC concentration predicted in the simulated pond water was 0.34 ppb. Chronic exposure from this drinking water would be 0.0000097 and 0.000034 mg/kg/day for adults and children, respectively; 0.17% of the c-PAD of 0.02 mg/kg/day for children. Based on this worse case analysis, the contribution of drinking water is negligible.

2. *Non-dietary exposure.* Flumioxazin is proposed only for agricultural uses and no homeowner or turf uses. Thus, no non-dietary risk assessment is needed.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Available information in this context include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. Although, the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way for most registered pesticides.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* The potential acute exposure from food to females 13–49 years old will utilize at most 21.9% of the a-PAD. This is the only population subgroup with an identified acute toxicity endpoint. Addition of the worse case, dietary exposure from water (0.00028 mg/kg/day) increases this exposure at the 99.9th percentile to 22.8% of the a-PAD. The Agency has no cause for concern if total acute residue contribution is less than 100% of the a-PAD, because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, it can be concluded that, there is a reasonable certainty that no harm will result to the overall U.S. population from aggregate, acute exposure to flumioxazin residues.

ii. *Chronic risk.* The potential chronic exposure from food to the U.S. population and various non-child/infant population subgroups will utilize at most 8.0% of the c-PAD. Addition of the worse case, dietary exposure from water (0.0000097 mg/kg/day) has no effect on this exposure. The Agency has no cause for concern if total chronic residue contribution is less than 100% of the c-PAD, because the PAD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Therefore, it can be concluded that, there is a reasonable certainty that no harm will result to the overall U.S. population from aggregate, chronic exposure to flumioxazin residues.

2. *Infants and children*—i. *Safety factor for infants and children.* EPA has determined that the special 10x SF to protect infants and children should be removed as published in the **Federal Register** of March 31, 2004 (69 FR 16823) (FRL–7351–2). The FQPA factor has been removed because developmental toxicity and offspring toxicity no observed adverse effect levels/lowest adverse effect levels (NOAELs/LOAELs) are well characterized; there is a well-defined dose-response curve for the cardiovascular effects; and the endpoints of concern used for overall risk assessments are appropriate for the route of exposure and population subgroups.

ii. *Acute risk.* No acute endpoint has been identified for infants and children. Therefore, no assessment of acute exposure from food to this subgroup is required.

iii. *Chronic risk.* The potential chronic exposure from food to children 3–5 years old (the most highly exposed child/infant subgroup) will utilize at most 18.1% of the c-PAD. Addition of the worse case, dietary exposure from water (0.000034 mg/kg/day) increases this exposure at the 100th percentile to 18.3% of the c-PAD. Therefore, it can be concluded that, there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to flumioxazin residues.

F. *International Tolerances*

Flumioxazin has not been evaluated by the JMPR and there are no codex maximum residue limits (MRL) for flumioxazin. MRL values have been established to allow the following uses of flumioxazin in the following countries.

Country	Crop	MRL (ppm)
Argentina	Soybean Sunflower	0.015 0.02
Brazil	Soybean	0.05
France	Grape	0.05
Paraguay	Soybean	0.015
South Africa	Soybean Groundnut	0.02 0.02
Spain	Soybean Peanut	0.05 0.05

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0016; FRL–7703–7]

Metconazole; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0016, must be received on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address: *waller.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0016. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the

version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0016. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0016. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0016.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0016. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: March 28, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Kureha Chemical Industry Co., Ltd

PP 9E5052

EPA has received a pesticide petition (PP 9E5052) from Kureha Chemical Industry Co., Ltd, c/o Company Agent, BASF Corporation, P.O. Box 13528, Research Triangle Park, NC, 27704-3528 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of metconazole in or on the raw agricultural commodity bananas at 0.05 parts per million. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1.*Plant metabolism*. The qualitative nature of the residues of metconazole in bananas is adequately understood. The metabolism of metconazole in bananas is characterized by a significant amount (greater than 85%) of unchanged parent compound. In addition to the parent compound, many other minor residue components (each less than 2% of the total recovered radioactivity in the whole fruit) were detected. Metconazole is the only residue of toxicological concern in bananas.

2.*Analytical method*. A practical analytical method for detecting and measuring the level of metconazole residues in whole bananas and banana pulp is submitted to EPA with this petition. Quantitation of residues of metconazole in bananas is by gas chromatography with a nitrogen-phosphorus detector. This independently validated method is appropriate for the enforcement purposes of this petition.

3.*Magnitude of residues*. Residue field trials were conducted in representative countries exporting the commodities of this petition to the United States. Twelve field trials were conducted with bagged and unbagged bananas, with three sites located in each of four countries, Ecuador, Honduras, Costa Rica, and Mexico. The residue values reported from these field trials were all less than the proposed tolerance of 0.05 ppm for whole bananas. No processing study is included with this petition as bananas have no processed commodities according to the EPA Residue Chemistry Test Guidelines.

B. Toxicological Profile

A complete, valid and reliable database of mammalian and genetic toxicology studies supports the proposed tolerance for metconazole on bananas. Two geometric isomers of metconazole exist, with the fungicidal activity being associated primarily with the cis isomer. The technical material that is manufactured for use on bananas is a mixture of cis and trans isomers in an 85 to 15 ratio (85:15). Toxicology studies submitted in support of this petition were conducted on the technical material composed of either the 85:15 isomer mixture (AC 900768) or a more purified (greater than 95%) sample of the cis isomer (WL 136184).

1.*Acute toxicity*. AC 900768 technical is considered to be slightly toxic (Toxicity Category III) to the rat by the oral route of exposure. In an acute oral study in rats, the LD_{50} value of AC 900768 technical was 727 milligrams per kilogram of body weight (mg/kg b.w.) for males and 595 mg/kg b.w. for females. The oral LD_{50} for combined sexes was 660 mg/kg b.w. An oral LD_{50} study in rats conducted with WL 136184 technical also supports the classification of metconazole as slightly toxic by the oral route of exposure. The oral LD_{50} values of WL 136184 technical were 1,626 mg/kg b.w. for males and 1,312 mg/kg b.w. for females, with an LD_{50} value for combined sexes of 1,459 mg/kg b.w. Since this petition is for an import tolerance, anticipated exposure is only via the oral route. As such, oral toxicity data sufficiently assess risk of acute exposure.

2.*Genotoxicty*. AC 900768 technical (the 85:15 isomer mixture) and WL 136184 technical (greater than 95% cis isomer) were tested in an extensive battery of *in vitro* and *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that metconazole does not pose a genotoxic risk, and therefore, is not likely to be a genotoxic carcinogen.

3.*Reproductive and developmental toxicity*. Developmental toxicity studies in rats conducted with AC 900768 technical and WL 136184 technical showed no evidence of teratogenic effects in fetuses, and no evidence of developmental toxicity in the absence of maternal toxicity. Thus, metconazole is neither a selective developmental toxicant nor a teratogen in the rat. In the rat developmental toxicity study with AC 900768 technical, the no-observable-adverse-effect-level (NOAEL) for maternal toxicity was 12 mg/kg b.w./day, based on decreased body weight gain at 30 mg/kg b.w./day, the next highest dose tested, and the NOAEL for developmental toxicity was also 12 mg/kg b.w./day, based on decreased fetal body weights and an increased incidence of skeletal ossification variations at 30 mg/kg b.w./day. In the rat developmental toxicity study conducted with WL 136184 technical, the NOAEL for maternal toxicity was 24 mg/kg b.w./day based on decreased body weight gain at 60 mg/kg b.w./day, the highest dose tested, and the NOAEL for developmental toxicity was also 24 mg/kg b.w./day, based on an increase in the total number of resorptions, reductions in fetal body weights and an increased incidence of skeletal ossification variations at 60 mg/kg b.w./day.

Results from a developmental toxicity study in rabbits with AC 900768 also indicated no evidence of teratogenicity or developmental toxicity in the absence of maternal toxicity. Thus, metconazole technical is neither a selective developmental toxicant nor a teratogen in the rabbit. In this rabbit developmental study, the NOAEL for maternal toxicity was 20 mg/kg b.w./day based on decreased food consumption and body weight gain, reductions in hemoglobin, hematocrit and corpuscular volume, increases in platelet counts and alkaline phosphatase activity, and increased absolute and relative liver weights at 40 mg/kg b.w./day (the highest dose tested). The NOAEL for developmental toxicity was also 20 mg/kg b.w./day, based on an increase in the total number and mean number of resorptions and decreased fetal body weight at 40 mg/kg b.w./day.

A 2-generation reproductive toxicity study in rats conducted with WL 136184 technical (greater than 95% cis isomer) is submitted in support of this tolerance petition. The results of the two-generation reproduction study with WL 136184 technical are sufficiently conservative for evaluating the potential reproductive toxicity of the 85:15 isomer mixture of metconazole technical. The results from the reproductive toxicity study with WL 136184 technical support a NOAEL for parental toxicity of 8 mg/kg b.w./day, based on increased ovarian weight and increased gestation length at the next highest dose tested (32 mg/kg b.w./day). The NOAEL for growth and development of the offspring is also 8 mg/kg b.w./day, based on reductions in live litter size for F_2 litters at 32 mg/kg b.w./day. The NOAEL for reproductive performance and fertility was 48 mg/kg b.w./day (the highest dose tested).

Results of the pilot and definitive reproduction studies and developmental toxicity studies conducted with AC 900768 technical and/or WL 136184 technical show no increased sensitivity to developing offspring as compared to parental animals, as comparable NOAELs were obtained for parental toxicity and growth and development of offspring.

4.*Subchronic toxicity*. Short-term (28-day) dietary toxicity studies in rats were conducted with AC 900768 and WL 136184 technical materials. In the 28-day study with AC 900768, the NOAEL was 100 ppm (approximately 9.6 mg/kg b.w./day), based on reductions in body weight, body weight gain, food consumption, and hemoglobin concentration for males, as well as increased absolute and relative liver weights, and increased incidences of hepatic fatty vacuolation and parenchymal hypertrophy for males and females at 1,000 ppm (the next highest concentration tested). Similar results were observed in the study conducted with WL 136184 technical. Based on these results, the NOAEL for WL 136184 is 300 ppm (approximately 28.5 mg/kg b.w./day), supported by decreased body weights and body weight gains and increased incidences of hepatic fatty vacuolation for males and females, increased absolute and adjusted liver weights for females, and decreased food consumption for males at 1,000 ppm (the next highest concentration tested).

In a 28-day dietary study in dogs conducted with AC 900768 technical (85:15 isomer mixture), the NOAEL was a dietary concentration of 1,000 ppm (approximately 38.6 mg/kg b.w./day), based on decreased food consumption, body weight losses, increased alkaline phosphatase activity, increased spleen and liver weights, and urinalysis changes for males and females, and increased absolute and relative thyroid gland weights for females at 7,000 ppm, the highest concentration tested.

Subchronic (90-day) dietary studies in rats were conducted with AC 900768 technical and WL 136184 technical. In the study conducted with AC 900768, the NOAEL was 100 ppm (approximately 6.8 mg/kg b.w./day) based on hepatic fatty vacuolation in males at 300 ppm, the next highest concentration tested. The NOAEL from the study conducted with WL 136184 technical was 450 ppm (approximately 30.9 mg/kg b.w./day) based on decreased food consumption, body weights, and body weight gains, clinical chemistry changes, increased absolute and adjusted liver weights, and histopathological changes in the liver and/or stomach for males and females, and decreased red blood cell parameters for females at 1,350 ppm, the highest concentration tested.

In a 90-day dietary study in mice conducted with AC 900768, the NOAEL was 30 ppm (approximately 5.5 mg/kg b.w./day), based on increased aspartate and alanine aminotransferase activities in males, increased absolute and relative weights of the liver and spleen of females, and increased incidences of hepatocelluar vacuolation and hypertrophy for males and females at 300 ppm, the next highest concentration tested.

A 90-day dietary study in beagle dogs with AC 900768 technical supports a NOAEL of 60 ppm (approximately 2.5 mg/kg b.w./day) based on decreased body weight gain and food consumption for females, and a slight increase in reticulocyte count for males at 600 ppm, the next highest concentration tested.

5.*Chronic toxicity*. Findings similar to those observed in the short-term subchronic studies were also apparent in the long-term dietary toxicity studies conducted in rats, dogs and mice. Long-term (104-weeks) administration of AC 900768 (85:15 isomer mixture) to rats supported a NOAEL for systemic toxicity of 100 ppm (approximately 4.8 mg/kg b.w./day), based on increased adjusted liver weight, and increased incidences of hepatocellular lipid vacuolation and centrilobular hypertrophy at interim sacrifice for males at 300 ppm, the next highest concentration tested. In a one-year dietary study in beagle dogs, the NOAEL was 300 ppm (approximately 11.1 mg/kg b.w./day), based on decreased body weight gain for males during weeks 1 to 13 and increased alkaline phosphatase activity for males and females at 1,000 ppm, the next highest concentration tested.

In a 104-week carcinogenicity study in rats conducted with AC 900768, the NOAEL for carcinogenicity was 1,000 ppm (approximately 50 mg/kg b.w./day), the highest concentration tested. In this study the NOAEL for chronic systemic toxicity was 100 ppm (approximately 5.6 mg/kg b.w./day), based on increased incidences of centrilobular hypertrophy and pigment disposition in the liver, and increased incidences of cortical vacuolation in the adrenal in males at 300 ppm, the next highest concentration tested.

A 91-week carcinogenicity study in mice with AC 900768 supports a NOAEL for non-neoplastic effects of 30 ppm (approximately 4.8 mg/kg b.w./day), based on increased white blood cell count for males, increased aspartate and alanine aminotransferase activities and increased absolute and adjusted liver weight for females, and microscopic changes in the liver, spleen and adrenal gland for males and females at 300 ppm (the next highest concentration tested). The NOAEL for carcinogenicity was 300 ppm (approximately 48.3 mg/kg b.w./day) based on increased incidences of hepatocellular adenomas in males and females and hepatocellular carcinomas in females at 1,000 ppm, the highest concentration tested. The increased incidences of hepatic adenomas and carcinomas at the highest concentration tested are considered to occur through promotional and non-genotoxic secondary mechanisms following toxicity and induction of mixed function oxidase in mice. Consequently, metconazole is not likely to be oncogenic in humans at the insignificant levels of exposure resulting from its use as a fungicide.

AC 900768 technical and WL 136184 technical are not genotoxic carcinogens, as supported by a battery of *in vitro* and *in vivo* mutagenicity tests, which cover all major genetic endpoints.

6.*Animal metabolism*. The rat metabolism studies indicate that the qualitative nature of the residues of metconazole in animals is adequately understood. In studies conducted with radiolabeled AC 900768 (85:15 isomer mixture) or radiolabeled WL 136184 (greater than 95% cis isomer) radioactivity was rapidly eliminated in urine and feces with 48 hours of dosing. Biliary excretion was shown to be a prominent route of elimination. At both high and low doses of AC 900768, male rats generally excreted statistically significantly lower amounts of radioactivity in the urine, and greater amounts of radioactivity in the feces,

compared to females. The pattern of metabolites detected was similar at high and low doses, and little or no parent compound was found in the feces or urine. Five days following oral dosing of AC 900768 at the higher level, low levels of radioactivity were detected in the majority of tissues analyzed; however higher concentrations of radioactivity were found in the adrenal glands, gastro-intestinal tract and liver. A comparison of radioactivity levels in the adrenal glands following oral administration of low and high doses indicates that uptake in the adrenal may be saturable. No differences in tissue levels were noted between males and females. Hen and goat metabolism studies are not required, because bananas are not used as significant feedstuff for poultry or cattle.

7.*Metabolite toxicology*. The metabolite CL 382390 was identified in the banana metabolism study at levels of less than 0.02 ppm or less than 2% of the total radioactive residue in whole bananas. This specific monohydroxylated metabolite was not confirmed in the rat metabolism studies; however, other monohydroxylated metabolites, including its stereo isomer were identified. In addition, CL 382390 was shown to have a low order of acute toxicity via the oral route with an LD_{50} value of greater than 5,000 mg/kg b.w. Another metabolite not identified in the rat metabolism studies, triazolylalanine, was found in the triazole-3,5-14C CL 900768 treated banana at less than 0.02 ppm or less than 2% of the total radioactive residue in whole bananas. Triazolylalanine has been shown to have a low order of acute toxicity by the oral route with an oral LD_{50} value of greater than 5,000 mg/kg [WHO/FAO Joint Meeting on Pesticide Residues (JMPR) review, 1989]. Thus, the parent metconazole is considered to be the only toxicologically significant residue in bananas.

8.*Endocrine disruption*. Collective organ weight data and histopathological findings from the two-generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species, demonstrate no apparent estrogenic effects or treatment-related effects of metconazole on the endocrine system.

C. Aggregate Exposure

1.*Dietary exposure*. The potential dietary exposure to metconazole has been calculated from the proposed tolerance for bananas. The very conservative chronic dietary exposure estimates for this crop assumes that 100 percent of all bananas were treated with metconazole and that all treated bananas contain metconazole residues at the tolerance level of 0.05 ppm.

2.*Food*. Using the assumptions discussed above, the Theoretical Maximum Residue Concentration (TMRC) values of metconazole were calculated for the U.S. general population and subgroups. Based on the proposed tolerance, the TMRC values for each group are:

- 0.0000142 mg/kg b.w./day for the general population;
- 0.0000461 mg/kg b.w./day for all infants;
- 0.0000473 mg/kg b.w./day for non-nursing infants;
- 0.0000407 mg/kg b.w./day for children 1 to 6 years of age; and
- 0.0000156 mg/kg b.w./day for children 7 to 12 years of age.

Potential exposure to residues of metconazole in food will be restricted to intake of bananas, dried bananas, and banana nectar.

3.*Drinking water*. The tolerance proposed in this petition is for a raw agricultural commodity imported into the United States. There are no approved uses for metconazole in the United States; therefore, the potential exposure to metconazole in drinking water is not relevant to this petition.

4.*Non-dietary exposure*. This petition is for a tolerance on an imported commodity. There is no approved use of metconazole in the United States. and none is being sought; therefore, the potential for non-dietary exposure to metconazole is not pertinent to this petition.

D. Cumulative Effects

Metconazole is a member of the triazole class of fungicides. Other members of this class are registered for use in the United States. Although metconazole and other triazoles may have similar fungicidal modes of action, there are no available data to determine whether metconazole has a common mechanism of mammalian toxicity with other triazoles or information on how to include this pesticide in a cumulative risk assessment. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1.*U.S. population*. The Reference Dose (RfD) represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. The chronic toxicity studies in rats and mice are the most appropriate studies to assess chronic dietary risk. These studies support a NOAEL of 4.8 mg/kg b.w./day, as the most sensitive dose for the estimation of the RfD for metconazole in humans. Based on the presence of a complete database for reproductive and developmental toxicity, and in the absence of teratogenicity or selective developmental toxicity, the use of a 100-fold safety factor is warranted for this compound. Applying a safety factor of 100 to this NOAEL results in the RfD of 0.048 mg/kg b.w./day. The chronic dietary exposure of 0.0000142 mg/kg b.w./day for the general U.S. population will utilize only 0.03% of the RfD of 0.048 mg/kg b.w./day. EPA generally has no concern for exposures below 100% of the RfD. The complete and reliable toxicity data and the conservative chronic dietary exposure assumptions support the conclusion that there is a ''reasonable certainty of no harm'' from potential dietary exposure to residues of metconazole in bananas.

2.*Infants and children*. The conservative dietary exposure estimates previously presented will utilize 0.1 percent of the RfD for all infants and as well as for the non-nursing infant group, which is the most highly exposed population subgroup. The chronic dietary exposures for children 1 to 6 years of age will utilize only 0.08% of the RfD, while for children ages 7 to 12 the estimated exposure will utilize only 0.03% of the RfD. Results from the two-generation reproduction study in rats with WL 136184 (greater than 95% cis isomer) and the developmental toxicity studies with AC 900768 in rats and rabbits indicate no increased sensitivity to developing offspring when compared to parental toxicity. For both the rat and rabbit developmental toxicity studies, embryotoxicity was only observed at maternally toxic doses. These results indicate that metconazole is neither a selective developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.048 mg/kg b.w./day, which utilizes a 100-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of metconazole in bananas.

[FR Doc. 05–7064 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2005–0020; FRL–7708–8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 21, 2005 to March 15, 2005, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2004–0020 and the specific PMN number or TME number, must be received on or before May 9, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please

follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0020. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0020 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–20040020 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 21, 2005 to March 15, 2005, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0335	02/22/05	05/22/05	International Specialty Products	(S) Component in membranes to enhance hydrophilicity/hydration flux; component in coatings to enhance adhesion of coating to the substrate; component in adhesives to enhance adhesive coatings on synthetic substrates; component in cleaners used as a thickener	(S) 2-propenoic acid, 2-metyhl-, dodecyl ester, polymer with 1-ethenyl-2-pyrrolidinone and 2-propenoic acid
P–05–0336	02/22/05	05/22/05	CBI	(S) Use as a herbicide safener in formulated pesticide products	(G) Isoxadifen-ethyl
P–05–0337	02/22/05	05/22/05	CBI	(G) Polymer is applied as a functional coating over inorganic solids.	(G) Diphenylcaprylmethicone
P–05–0338	02/23/05	05/23/05	Tremco Inc.	(G) Water-proofing sealant additive	(G) Alkylene ether amine, blocked
P–05–0339	02/23/05	05/23/05	Falcon Lab LLP	(S) Adjuvant for pesticides	(S) Nonanoic acid, ammonium salt
P–05–0340	02/24/05	05/24/05	Eftec North America, L.L.C.	(G) Automobile coating	(G) Blocked polyurethane
P–05–0341	02/24/05	05/24/05	Eftec North America, L.L.C.	(G) Automobile coating	(G) Blocked polyurethane
P–05–0342	02/24/05	05/24/05	CBI	(G) Coating and ink ingredient	(G) Glycerides, alkyl mono, di- and tri-, alkoxylated
P–05–0343	02/24/05	05/24/05	CBI	(G) Surface coating resin	(G) Siloxanes and silicones, di-methyl, alkoxy aryl, polymers with aryl silsesquioxanes, alkoxy-terminated, polymers with epichlorohydrin and 4,4′-(1-alkylidene) bis [cycloalkanol]
P–05–0344	02/25/05	05/25/05	E.I. Du Pont De Nemours and Company Inc.	(G) Intermediate	(G) Polyether glycol
P–05–0345	02/25/05	05/25/05	E.I. Du Pont De Nemours and Company Inc.	(G) Intermediate	(G) Copolyether glycol
P–05–0346	02/24/05	05/24/05	CBI	(G) An open non-dispersive use	(G) Polyester resin
P–05–0347	02/25/05	05/25/05	Ashland Inc., Environmental Health and Safety	(G) The material performs as a flexibilizer for epoxy vinyl ester resins	(G) Poly[oxy(alkyldiyl), .alpha.-hydro-.omega.-hydroxy-, acrylated-blocked polymer with 1,1′-methylenebis[isocyanatobenzene],
P–05–0348	02/24/05	05/24/05	CBI	(G) Fluid retention polymer	(G) Dialkyldiallylsodium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid sodium salt, and two substituted monomers.
P–05–0349	02/24/05	05/24/05	CBI	(G) Fluid retention polymer	(G) Dialkyldiallylsodium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid sodium salt, and two substituted monomers.
P–05–0350	02/25/05	05/25/05	CBI	(S) Toner binder	(G) Polyester resin
P–05–0355	02/28/05	05/28/05	Ashland Inc., Enviornmental Health and Safety	(G) Two-component laminating adhesive designed to exhibit improved adhesion to metal surfaces and improved resistance to heat exposure.	(G) Poly(oxy-1,2-ethanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with alkyl diisocyanate
P–05–0356	03/01/05	05/29/05	KAO Specialties Americas LLC	(S) Emulsifier in metalworking fluids; thickener and foam booster in dishwashing agent and car shampoo	(S) Amides, canola-oil, n-(hydroxyethyl), ethoxylated
P–05–0357	02/28/05	05/28/05	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(S) Pentadecane, 7-(bromomethyl)-
P–05–0358	02/28/05	05/28/05	3M	(G) Textile treatment additive.	(G) Polycarbodiimide
P–05–0359	03/02/05	05/30/05	CBI	(G) Crosslinker	(G) Isocyanate acid, polyalkylenepolyphenyylene ester, 2-(2-alkoxy)alkanol-and alkylene glycol-blocked
P–05–0360	03/02/05	05/30/05	CBI	(G) Printing ink	(G) 7h-pyrazolo [1,5-b] [1,2,4] triazole derivative
P–05–0361	03/02/05	05/30/05	CBI	(G) Chemical additive	(G) Siloxanes and silicones, di-methyl, 3-(2-hydroxyalkoxy)-1-[(2-hydroxyalkoxy)alkyl]-1-alkenyl methyl
P–05–0362	03/02/05	05/30/05	CMP Coatings, Inc.	(S) Paint additive	(G) Reaction products with dimethyl octatriene

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0363	03/03/05	05/31/05	CBI	(G) Open non-dispersive (coatings additive)	(G) Aliphatic, blocked polyisocyanate
P–05–0364	03/03/05	05/31/05	IGM Resins Inc	(S) Cationic ultra violet-initiator for production of ultra violet-curable dvd-adhesives; cationic utlra violet-initiator for production of ultra violet-curable can coatings; cationic ultra violet-initiator for production of ultra violet-curable flexographic ink	(S) 9h-thioxanthenium, 10-[1,1′-biphenyl]-4-yl-2-(1-methylethyl)-9-oxo-, hexafluorophosphate(1-)
P–05–0365	03/04/05	06/01/05	CBI	(G) Paint primer for metal substrates; corrosion inhibitor for metal substrates	(G) Substituted aliphatic amine
P–05–0366	03/04/05	06/01/05	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted phenylsulfonyl, substituted acid chloride
P–05–0367	03/04/05	06/01/05	CBI	(G) Coating component	(G) Mixed metal oxide complex
P–05–0368	03/04/05	06/01/05	CBI	(G) Resin coating	(G) Alkanoic acid, 2-hydroxy-, ion(1-), salt with bisphenol a-bisphenola-epichlorohydrin polymer alkanoate-2-(dialkylamino)alkanol-2-alkyl-1-alkanol-toluene diisocyanate reaction products
P–05–0369	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0370	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0371	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0372	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0373	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0374	03/04/05	06/01/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0375	03/04/05	06/01/05	CBI	(G) Pigment dispersant	(G) Sma ester potassium salt
P–05–0376	03/04/05	06/01/05	CBI	(G) Pigment dispersant	(G) Sma ester sodium salt
P–05–0377	03/04/05	06/01/05	Henkel Consumer Adhesives Inc.	(S) Adhesive and sealant	(G) Silane terminated polyurethane
P–05–0378	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Acrylic component of industrial coatings and adhesive applications	(G) B-keto ester, polymer with 2-ethyl-2-[[(1-oxo-2-propenyl)oxy]methyl]-1,3-propanediyl di-2-propenoate and 2-hydroxyethyl 2-propenoate, polymer with krasol lbd 2000
P–05–0379	03/07/05	06/04/05	Forbo Adhesives, LLC	(G) Hot melt adhesive	(G) Isocyanate functional polyester urethane polymer
P–05–0380	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Roofing adhesive for bonding roof membranes (such as pvc, tpo) to substrates (such as insulation boards or concrete surfaces)	(G) Benzene, 1,1′-methylenebis[4-isocyanato-, polymer with benzenedicarboxylic acid, butyl dialkyl ester, poly[oxy(methyl-1,2-ethanediyl)], .alpha.-hydro--hydroxy-, oxirane, alkyll-, polymer with oxirane, ether with propanepolyol and sartomer's hlbh p-3000 and lexorez 1180
P–05–0381	03/04/05	06/01/05	Ge Betz	(G) Component in a non-chrome treatment for metals.	(G) Phosphonated polyamine
P–05–0382	03/04/05	06/01/05	Ge Betz	(G) Component in a non-chrome treatment for metals.	(G) Phosphonated polyamine
P–05–0383	03/04/05	06/01/05	Ge Betz	(G) Component in a non-chrome treatment for metals.	(G) Phosphonated polyamine
P–05–0384	03/04/05	06/01/05	Ge Betz	(G) intermediate	(G) Polyamine phosphate salt
P–05–0385	03/04/05	06/01/05	Ge Betz	(G) intermediate	(G) Polyamine hydrochloride salt
P–05–0386	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3-(C_{10-16}-alkyloxy)-2-hydroxypropyl ethers and alkyl diacrylate, reaction products with monoalkyl acrylate
P–05–0387	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4′-(1-methylethylidene)bis[phenol] 2-propenoate and alkyl diacrylate, reaction products with monoalkyl acrylate a and monoalkyl acrylate b

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0388	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with cn 115, 2-propenoic acid, oxybis(methyl-2,1-ethanediyl) ester and cyclic alkyl monoacrylate
P–05–0389	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3-(C_{10-16}-alkyloxy)-2-hydroxypropyl ethers and alkyl diacrylate, reaction products with monoalkyl acrylate
P–05–0390	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymer with (chloromethyl)oxirane polymer with 4,4′-(1-methylethylidene) bis[phenol]2-propenoate and alkyl diacrylate, reaction products with monoalkyl acrylate a and monoalkyl acrylate b
P–05–0391	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink	(G) .beta.-ketoester, polymers with cn 115, 2-propenoic acid, oxybis(methyl-2,1-ethanediyl) ester and cyclic alkyl monoacrylate
P–05–0392	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoesters, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3-(C_{10-16})-alkyloxy)-2-hydroxypropyl ethers, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and amine acrylate, reaction products with alkyl amine and alkanol amine
P–05–0393	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoesters, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3-(C_{10-16})-alkyloxy)-2-hydroxypropyl ethers, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and alkyl acrylate, reaction products with alkyl amine and alkanol amine
P–05–0394	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoesters, polymers with aromatic epoxy acrylate, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and amine acrylate, reaction products with alkyl amine and alkanol amine
P–05–0395	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoesters, polymers with aromatic epoxy acrylate, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and alkyl acrylate, reaction products with alkyl amine and alkanol amine
P–05–0396	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoester and .beta.-diketone, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3- (C_{10-16})-alkyloxy)-2-hydroxypropyl ethers, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and amine acrylate, reaction products with alkyl amine and alkanol amine

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0397	03/07/05	06/04/05	Ashland Inc., Enviornmental Health and Safety	(G) Adhesive, coating, ink, over-print varnish	(G) .beta.-ketoester and .beta.-diketone, polymers with bisphenol a diglycidyl ether homopolymer diacrylate 3- ($C_{10–16}$)-alkyloxy)-2-hydroxypropyl ethers, 1,6-hexanediol diacrylate, polyethylene glycol monoacrylate ether with trimethylolpropane (3:1), and alkyl acrylate, reaction products with alkyl amine and alkanol amine
P–05–0398	03/08/05	06/05/05	Kemira Chemicals, Inc.	(G) Dispersive use (e.g., paper manufacturing)	(G) Fatty acids, $C_{16–18}$ and C_{18}-unsaturated reaction products with triethanolamine, dimethyl sulfate-quaternized
P–05–0399	03/08/05	06/05/05	Kemira Chemicals, Inc.	(G) Dispersive use (e.g., paper manufacturing)	(G) Fatty acids, $C_{16–18}$ and C_{18}-unsataurated reaction products with triethanolamine, methyl chloride-quaternized
P–05–0400	03/08/05	06/05/05	Firmenich Inc.	(S) Aroma chemical for use in fragrance mixtures, that in turn are used in perfumes, soaps, cleaners, etc.	(S) 1-butanone, 3-(dodecylthio)-1-(2,6,6-trimethyl-3-cyclohexen-1-yl)-
P–05–0401	03/09/05	06/06/05	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester acrylic polyether urethane polymer
P–05–0402	03/08/05	06/05/05	CBI	(G) Paper additive	(G) Arene,alkenyl-, homopolymer, hydroxyaromatic carboxylic acid-terminated, metal complexes
P–05–0403	03/08/05	06/05/05	CBI	(G) Paper additive	(G) Alkylaldehyde, polymer with alkylarenol, hydroxyaromatic carboxylic acid-terminated, metal complexes
P–05–0404	03/09/05	06/06/05	CBI	(G) Open non-dispersive use	(G) Polymer modified rosin.
P–05–0405	03/10/05	06/07/05	Eastman Kodak Company	(G) Contained use in an article	(G) Substituted phenylsulfonyl, halosubstituted benzamide
P–05–0406	03/10/05	06/07/05	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Substituted naphthalenedisulfonic acid
P–05–0407	03/10/05	06/07/05	CBI	(G) Polyester resin	(G) Poyester
P–05–0408	03/10/05	06/07/05	CBI	(G) Polyester resin	(G) Poyester
P–05–0409	03/10/05	06/07/05	CBI	(G) Polyester resin	(G) Poyester
P–05–0410	03/10/05	06/07/05	CBI	(G) Polyester resin	(G) Poyester
P–05–0411	03/11/05	06/08/05	CBI	(G) Coating resin	(G) Phenol, 4,4′-(1-alkylalkylidene)bis-, reaction products with bisphenol a-epichlorohydrin polymer alkanoate, dialkylenetriamine, 2-(alkylamino)alkanol, 1,1′-alkylenebis[4-isocyanatobenzene] and polyalkylene glycol ether with bisphenol a (2:1)
P–05–0412	03/11/05	06/08/05	IGM Resins Inc	(S) Free radical - initiator for production of ultra violet-curable offset inks; free radical - initiator for production of ultra violet-curable wood coatings; free radical -initiator for production of ultra violet curable flexographic ink	(S) Poly(oxy-1,4-butanediyl), .alpha.-[[(9-oxo-9h-thioxanthenyl)oxy]acetyl]-.omega.-[[[(9-oxo-9h-thioxanthenyl)oxy]acetyl]oxy]-
P–05–0413	03/11/05	06/08/05	IGM Resins Inc	(S) Free radical - initiator for production of ultra violet-curable offset inks; free radical - initiator for production of ultra violet-curable wood coatings; free radical -initiator for production of ultra violet curable flexographic ink	(S) Poly(oxy-1,4-butanediyl),.alpha.-[(4-benzoylphenoxy)acetyl]-.omega.-[[(4-benzoylphenoxy)acetyl]oxy]-
P–05–0414	03/14/05	06/11/05	International Specialty Products	(S) Intermediate in the production of styleze w-20 / styleze w-10	(S) 1-dodecanaminium, n,n-dimethyl-n-[3-[(2-methyl-1-oxo-2-propenyl)amino]propyl]-, chloride
P–05–0415	03/11/05	06/08/05	CBI	(G) Automotive coatings	(G) Acrylic polymer
P–05–0416	03/11/05	06/08/05	CBI	(G) Automotive coatings	(G) Acrylic polymer

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0417	03/14/05	06/11/05	Cytec Industries Inc.	(G) crosslinking resin	(G) Tris-alkyl-alkoxy melamine polymer
P–05–0418	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′6″-(1,3,5-triazin-2,4,6-triyltriimino) tris-, compound with 2-aminoethanol
P–05–0419	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′6″-(1,3,5-triazin-2,4,6-triyltriimino)tris-, compound with 2-amino-2-methyl-1-propanol
P–05–0420	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′6″-(1,3,5-triazin-2,4,6-triyltriimino)tris-, compound with 1-amino-2-propanol
P–05–0421	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′6″-(1,3,5-triazin-2,4,6-triyltriimino)tris-, compound with 1,1′,1″ -nitrilotris [2-propanol]
P–05–0422	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′6″-(1,3,5-triazin-2,4,6-triyltriimino)tris-, compound with 1,1′-iminobis[2-propanol]
P–05–0423	03/15/05	06/12/05	Lubrizol Metalworking Additives	(S) Anti-corrosion additive for metalworking fluids	(S) Hexanoic acid, 6,6′,6″-(1,3,5-triazine-2,4,6-triyltriimino)tris-, compound with 2-(2-aminoethoxy) ethanol
P–05–0424	03/15/05	06/12/05	Eftec North America, L.L.C.	(G) Automobile coating	(G) Nh2-terminated polyurethane prepolymer
P–05–0425	03/15/05	06/12/05	Cytec Surface Specialties Inc.	(S) Binder for paints and coatings	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyalkyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate, 2-methylpropyl 2-methyl-2-propenoate, and 2-oxepanone and 2-propenoic acid, tert-bu 2-ethylhexaneperoxoate-initiated, compounds with 2-(dimethylamino)ethanol
P–05–0426	03/15/05	06/12/05	Cytec Surface Specialties Inc.	(S) Binder for paints coatings	(G) 2-propenoic acid, 2-methyl-, alkyl ester, polymer with butyl 2-propenoate, ethenylbenzene, and 2-propenoic acid, tert-bu 2-ethylhexaneperoxoate-initiated, compounds with 2-(dimethylamino)ethanol
P–05–0427	03/15/05	06/12/05	CBI	(G) Chemical intermediate	(G) Polyketone oligomer
P–05–0428	03/15/05	06/12/05	Cytec Surface Specialties Inc.	(S) Binder for paints and coatings	(G) 1,3-benzenedicarboxylic acid, polymer with 1,3-diisocyanatomethylbenzene, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, 5-isocyanato-1-(isocyanatomethy l)-1,3,3-trimethylcyclohexane, and (alkylidene)bis[cyclohexanol], 3-oxobutanoate, compound with n,n-diethylethanamine
P–05–0429	03/15/05	06/12/05	Cytec Surface Specialties Inc.	(S) Resin for industrial paints	(G) Modified fatty acids, polymer with 1,6-hexanediol, isophthalic acid, and trimellitic anhydride
P–05–0430	03/15/05	06/12/05	CBI	(G) Stabilizing additive for polymers	(G) Substituted benzotriazole
P–05–0431	03/15/05	06/12/05	CBI	(G) Lubricant additive	(G) 2,5-furandione, polymer with ethane and 1-propene, reaction product with aryl amine

I. 96 PREMANUFACTURE NOTICES RECEIVED FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–05–0432	03/15/05	06/12/05	DIC International (USA), Inc.	(G) Adhesives	(G) Alkanedioic acid, polymer with amine, alkanediols, caprolactone, dialkyl ester of sulfated aromatic dicarboxylic acid, sodium salt, hydroxy substituted alkane, isocyanates and alkanetriol.
P–05–0437	03/15/05	06/12/05	Cytec Surface Specialties Inc.	(S) Binder for paints and coatings	(G) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 4-hydroxybutyl 2-propenoate 2-methylpropyl 2-methyl-2-propenoate, and 2-oxepanone, tert-bu 2-ethylhexaneperoxoate-initiated

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 02/21/05 TO 03/16/05

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–05–0003	03/14/05	04/27/05	CBI	(G) Polyurethane's market	(G) Soy polyol

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 49 NOTICES OF COMMENCEMENT FROM: 02/21/05 TO 03/15/05

Case No.	Received Date	Commencement Notice End Date	Chemical
P–00–0536	03/09/05	02/21/05	(G) Reaction product of: polyoxyalkylene solution with trimethylolpropane, 1,4, cyclohexane dimethanol, cyclic aliphatic anhydrides, trimellitic anhydride and block copolymers of ethylene oxide + propylene oxide
P–00–0537	03/09/05	02/28/05	(G) Reaction product: polyoxyalkylene solution with trimethylolpropane, 1,4 cyclohexane dimethanol, cyclic aliphatic anhydrides and trimellitic anhydride
P–03–0698	03/03/05	02/15/05	(G) Rosin, polymer with a monocarboxylic acid, alkylphenols, formaldehyde, maleic anhydride and pentaerythritol.
P–03–0715	03/08/05	03/01/05	(G) Dialkyl dimethyl ammonium carbonate (1:1)
P–03–0716	03/08/05	03/01/05	(G) Dialkyl dimethyl ammonium carbonate (2:1)
P–03–0849	03/03/05	02/22/05	(G) Aqueous polyurethane dispersion
P–03–0866	03/14/05	02/16/05	(S) Siloxanes and silicones, di-methyl, polymers with 3-[(2-aminoethyl)amino]propyl ph silsesquioxanes, methoxy-terminated
P–04–0421	03/04/05	02/17/05	(G) Polyester polycarbamate
P–04–0436	03/10/05	03/01/05	(G) Urethane acrylate
P–04–0462	03/09/05	02/14/05	(G) Polyurethane prepolymer
P–04–0475	03/09/05	02/02/05	(G) Alkyl methacrylate copolymer
P–04–0495	02/23/05	09/27/04	(G) Direct black azo dye
P–04–0498	02/23/05	09/27/04	(G) Direct black azo dye
P–04–0573	03/03/05	02/12/05	(G) Aliphatic polyisocyanate
P–04–0584	02/25/05	01/20/05	(G) Maleic anhydride and acrylics modified polyolefin
P–04–0634	03/09/05	03/02/05	(G) Reaction product of: isophorone diisocyanate, aliphatic diamine, .beta.hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl) and aliphatic hydroxy functional polyols.
P–04–0675	03/01/05	02/10/05	(G) N,n,n-trialkyl-alkylaminium, n-aminocarbonylalkenyl, chloride, polymer with n-sulfoalkyl-aminocarbonylalkenyl, sodium salt and aminocarbonylalkenyl
P–04–0676	03/01/05	02/10/05	(G) N,n,n-trialkyl-alkylaminium, n-aminocarbonylalkenyl, chloride, polymer with n-sulfoalkyl-aminocarbonylalkenyl, sodium salt and aminocarbonylalkenyl
P–04–0692	02/28/05	02/10/05	(G) Trifunctional acrylic ester
P–04–0693	03/15/05	02/10/05	(G) Urethane acrylate oligomer
P–04–0715	02/24/05	02/08/05	(G) Acrylic copolymer
P–04–0745	02/23/05	01/28/05	(G) Organosilane ester
P–04–0746	02/23/05	01/28/05	(G) Amino phenolic reaction product with polyvinylphenol

III. 49 NOTICES OF COMMENCEMENT FROM: 02/21/05 TO 03/15/05—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–04–0751	03/09/05	02/10/05	(G) Alkanedioic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 1,3-isobenzofurandione and 2-methyl-1,3-propanediol, 2-hydroxy-3-[(1-oxoneodecyl)oxy]propyl ester
P–04–0763	03/01/05	02/10/05	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), calcium sodium salt
P–04–0764	03/01/05	02/10/05	(G) Polycarboxylate polymer with alkenyloxyalkylol modified poly(oxyalkylenediyl), sodium salt
P–04–0797	02/22/05	01/28/05	(G) Poly acrylic dispersion peroxide initiated poly acrylic esters with amine salt.
P–04–0802	02/23/05	02/08/05	(G) Isocyanate terminated urethane polymer
P–04–0817	03/04/05	02/23/05	(G) Trimethyl acyclic alkenones
P–04–0818	03/10/05	02/23/05	(G) Urethane acrylate
P–04–0832	02/23/05	02/11/05	(S) Bicyclo[2.2.1]heptan-2-ol, 2-ethyl-1,3,3-trimethyl-
P–04–0839	02/25/05	02/08/05	(G) Copolymer of acrylic acid and maleic acid
P–04–0840	02/25/05	02/11/05	(G) Copolymer of maleic acid and styrene
P–04–0841	02/25/05	02/14/05	(G) Copolymer of maleic acid and styrene
P–04–0842	02/25/05	02/08/05	(G) Copolymer of maleic acid and styrene
P–04–0843	02/25/05	02/11/05	(G) Copolymer of acrylic acid and styrene
P–04–0872	02/23/05	01/25/05	(G) Aromatic polyester polyurethane prepolymer based on mdi
P–04–0877	03/15/05	03/04/05	(G) Substituted ppvs (poly-p-phenylen-vinylens)
P–04–0879	02/23/05	01/24/05	(G) C_{11-17} hydrocarbons
P–04–0911	02/24/05	01/24/05	(G) Aryl-substituted diether propane
P–04–0960	03/11/05	02/14/05	(G) Biphenyl-bis(azo-acetoaceto-benzoate)
P–05–0040	03/04/05	01/24/05	(G) Modified starch-acrylate polymer
P–05–0066	02/23/05	02/16/05	(G) Polyester polyurethane
P–05–0071	03/10/05	02/16/05	(G) Telechelic polyacrylates
P–05–0077	02/23/05	02/18/05	(S) Siloxanes and silicones, di-methyl, 3-hydroxypropyl methyl, ethers with poly-ethylene glycol and polyethylene glycol mono(2-carboxyethyl) ether, polymers with 1,1′-methylenebis[4-isocyanatocyclohexane]
P–05–0103	02/22/05	02/07/05	(G) Halo phenyl amino substituted cyclohexene salt
P–05–0111	02/25/05	02/22/05	(G) Toluylenediisocyanate, reaction product with benzenedimethanamine and methoxypolyethylene glycol
P–05–0113	02/25/05	02/22/05	(G) Polyethylene-polypropylene glycol, reaction product with octadecylisocyanate
P–95–0482	03/15/05	02/23/05	(G) Condensation polyester of glycols and diacids

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 30, 2005.

Vicki A. Simons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05–6854 Filed 4–7–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. North Penn Mutual Holding Company and North Penn Bancorp, both of Scranton, Pennsylvania; to become bank holding companies by acquiring 100 percent of the of the voting shares of North Penn Bank, Scranton, Pennsylvania.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Premier Community Bankshares, Inc., Winchester, Virginia; to acquire 100 percent of the voting shares of Premier Bank, Inc., Martinsburg, West Virginia (in organization).

C. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Oakland Venture Group, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Innovative Bancorp, and thereby indirectly acquire Innovative Bank, both of Oakland, California.

Board of Governors of the Federal Reserve System, April 4, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–7014 Filed 4–7–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Linkage of International Collaboration and Research Programs for Prevention and Control of Malaria

Announcement Type: New.

Funding Opportunity Number: RFA CI05–062.

Catalog of Federal Domestic Assistance Number: 93.283.

Application Deadline: May 23, 2005.

I. Funding Opportunity Description

Authority: 42 U.S.C. 241(a); 42 U.S.C. 2421.

Background

Burden of malaria in Africa and Asia: Each year, malaria causes an estimated 500 million infections and more than one million deaths. The main risk groups in highly endemic areas, such as in most of sub-Saharan Africa, are children less than five years of age and pregnant women. Malaria drains economies in Africa, Asia, and the Americas—causing a loss of up to six percent of Gross National Product (GNP) from lost productivity and health service costs, with over 50 percent of the world's population at risk for malaria. Thus, prevention of malaria and, when it occurs, its effective treatment, are high public health priorities in endemic countries. There is a paucity of data on the burden of malaria from Asia.

Malaria control: Three major tools are currently used to control malaria: preventing and treating disease with drugs, reducing human-vector contact such as by insecticide treated mosquito nets (ITNs), and controlling mosquitoes (*e.g.* spraying of insecticides).

The use of drugs for treatment and prevention remains one of the main pillars for the Roll Back Malaria initiative (RBM), but the rampant spread of drug resistance of the malaria parasite to the cheap and most commonly available antimalarials is a major problem. Nevertheless, drug development has improved considerably in the last five years and the outlook for new antimalarials is now better than it has been for decades. Much needs to be done to test their safety and efficacy and further work is needed to ensure that they are optimally used and made accessible to the target population.

Reduction of human-vector contact by use of ITNs has been shown to reduce under-five mortality by 18 percent in Africa and ITNs are now one of the main RBM strategies. Despite the clear evidence of their efficacy in Africa, very little is known about their impact in Asia. In some regions of Asia the vector bites early in the evening or morning thus ITNs may not be the optimal prevention tool and other methods that reduce human-vector contact should be explored, including DEET retaining repellents.

Vector control has saved millions of lives worldwide and indoor residual spraying with insecticides (IRS) continues to play a major role in much of Latin America and Asia, but its cost, logistical complexity and moderate efficacy made it poorly suited for rural areas of sub-Saharan Africa.

Nevertheless advances in genomics (including the mapping of the mosquito and parasite genome), biotechnology, and mapping using geographical information systems, present exiting new opportunities for the development and employment of more cost-effective tools that take aim at the mosquito.

Global collaboration: Although important progress in malaria control has been accomplished in recent years, much more could have been done. This slow progress is partly due to the lack of funding. CDC recognizes that this is also due to lack of coordination between research groups, and between researchers and donors, policy makers, and Government Ministries responsible for implementation. After decades of neglect the international community is showing a renewed interest in controlling malaria. This has resulted in new initiatives, including the RBM initiative, Global Fund Initiative (GFATM) and Malaria Vaccine Initiative as well as significant new funding for both research and program development. Global collaboration is now more critical than ever to ensure translation of this commitment into action and avoid fragmentation of efforts. Many of these studies require well-coordinated multi-center trials to allow rapid accumulation of data and account for the geographical variations in drug sensitivity, frequency of host-genetic polymorphism, cultural preferences and economics.

Purpose

The purpose of this program is to strengthen international collaborative efforts with leading European Institutions to expedite the identification, evaluation and implementation of malaria control strategies in sub-Saharan Africa and Asia. The aim is to move forward the RBM agenda of increasing access to case management and preventive interventions against malaria by promoting work in a complementary way on key issues relevant to the control of malaria.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010'', a national activity to reduce morbidity and mortality and improve the quality of life. This announcement addresses the ''Healthy People 2010'' focus areas of HIV, Immunization, Infectious Diseases and Public Health Infrastructure. For the conference copy of ''Healthy People 2010'', visit the Internet site *http://www.health.gov/healthy-people.*

Measurable outcomes of the program will be in alignment with one (or more) of the National Center for Infectious Disease (NCID) priority areas identified in ''Protecting the Nation's Health in an Era of Globalization: CDC's Global Strategy for Addressing Infectious Diseases''. Priority areas for this cooperative agreement include: (1) Applied research on diseases of global importance, (2) application of proven public health tools, (3) global initiatives for disease control and, (4) public health training and capacity building.

Research Objectives

- Nature of the research problem.

Burden and control of malaria in India: Conventional estimates of the global burden of malaria suggest that over 90 percent of the burden occurs in Africa. There is however a paucity of reliable data from Asia, particularly India, which has a population of 1 billion, more than the entire African continent. India's National Vector Borne Disease Control Programme reports less than two million cases annually, but recent estimates from the World Health Organization (WHO) suggest this may be as high as 45–100 million. Although transmission is lower than in Africa, less malarial immunity is acquired during a lifetime of exposure so that even adults remain at risk of dying from severe malaria. Establishment of more accurate estimates of the burden of malaria, and appropriate evidenced-based treatment and prevention policies are essential to minimizing this public health threat of malaria in India.

ITNs and IRS alone can reduce malaria transmission by as much as 90 percent. Despite this, a significant

proportion of the population remains infected. Evidence from Thailand and Vietnam suggests that sustained reductions in transmission may be achieved by combining vector control with use of antimalarials that contain Artemisinin derivatives. Artemisinin containing combination therapy (ACT) offers great hope for the control of malaria. These drugs not only provide fast and highly effective treatment, but also have the potential to interrupt transmission by markedly reducing gametocyte development of the parasite and enhance the effects of vector control. It is likely that these promising results from South East Asia are applicable to large regions in India with similar transmission patterns and vector behavior, and this now needs to be evaluated.

Malaria control in pregnancy: Intermittent preventive therapy (IPT) and ITNs are the two main strategies for malaria control in pregnancy in areas with moderate to high malaria transmission. Nevertheless, the scientific evidence on which these policy recommendations are based is incomplete and many research questions remain. For example it is unclear whether IPT or ITNs work in areas with low malaria transmission. Furthermore, for IPT there is a heavy reliance on sulfadoxine-pyrimethamine (SP) and chloroquine and there is an urgent need to identify alternative drugs as both these drugs have increasing drug resistance. Despite the recognition that malaria poses an important problem in pregnancy, the arsenal of drugs for the prevention and control of malaria in pregnancy (MIP) lags behind that for children. This can be attributed to the systematic exclusion of pregnant women from trials for fear of toxicity to the fetus, the scarcity of resources specific for this high-risk group, and to some extent to the lack of global coordination of research agendas.

Recently a new global malaria in pregnancy research consortium (MIP Consortium) of over 40 research institutions, together with the World Health Organization (WHO/RBM), identified the key priority areas of research for malaria control in pregnancy. These include: (1) The determination of the burden of malaria in pregnancy in areas of low transmission, such as in Asia, to enhance the ability of public health programs to develop and target appropriate intervention approaches in these regions; (2) studies of the pharmacokinetics, safety and efficacy of alternative drugs for treatment and prevention of malaria in pregnancy, and; (3) studies that determine how best to use ITNs and antimalarial drugs in combination to maximize the prevention benefit and limit adverse exposures in pregnancy.

Malaria control in children:

Treatment: SP has been the mainstay of malaria treatment in many countries in Africa over the last 10 years, yet resistance to SP is emerging rapidly. Artemisinin derivatives combined with other antimalarial (ACTs) have the potential to improve cure rates and reduce the development of drug resistance. There are a number of artemisinin-based combinations that have or will become available and require evaluation to assist in policy formulation.

New drug approaches to malaria prevention in children: Daily or weekly malaria prophylaxis is no longer recommended for malaria endemic countries and new strategies for the prevention of malaria involving drugs are required. One such strategy is IPT, and consists of administration of full treatment doses given presumptively (regardless of the presence of malaria) at predefined intervals to provide prolonged periods of protection. This approach is now widely advocated for pregnant women attending antenatal care (IPTp) and is being evaluated (by CDC and others) for the prevention of severe malaria and anemia in infants (IPTi). More research is required to further develop the concept of IPT in other high-risk populations such as in young children admitted with severe malarial anemia requiring a blood transfusion. Previous studies have indicated that this group is at very high risk of rebound severe anemia and death in the six-month period post-discharge. Prolonged periods of protection from malaria from intermittent antimalarial treatment post discharge (IPTpd) may prevent re-infection and increase hematological recovery and possibly reduce death due to rebound severe anemia.

HIV-infected individuals: The burden of malaria is exacerbated by the advent of HIV, which increases susceptibility to malaria, particularly in pregnancy. Conversely acute malaria is associated with transient rises in HIV viral load. It is unclear whether repeated frequent malaria infections in areas with intense malaria transmission is associated with increased AIDS disease progression, and if so, whether prevention of malaria can reduce AIDS disease progression. Furthermore with the wide spread use of antimalarials and with the introduction of anti-retroviral drugs in Africa there is an urgent need to determine the safety and kinetics of these drugs when used at the same time.

- Scientific knowledge to be achieved through research supported by this program.

India & Asia:

1. Identifying the burden of malaria in selected Asian countries, including India.
2. Identifying potential interventions to reduce the burden of malaria in pregnant women in India.
3. Evidence of the effectiveness of reducing malaria transmission in a large region through multi-pronged approach that uses a combination of vector control measures and appropriate treatment and prevention of malaria with artemisinin containing combination therapies.

Pregnant Women:

4. Evidence of the pharmacokinetics, safety and efficacy of new antimalarials for treatment and prevention of MIP.
5. Knowledge of how best to combine ITNs with antimalarials in the prevention of malaria in pregnancy.

Children:

6. Evidence of the safety and efficacy of new antimalarials for the treatment of non-severe malaria in children.
7. The degree to which IPT is effective for the prevention of severe malaria and anemia among children.

HIV infected patients:

8. Knowledge of the safety and kinetics of ARVs and antimalarials in HIV infected persons when used at the same time.
9. Knowledge of the impact of malaria prevention on the rate of HIV disease progression.

- Objectives of this research program.

Strengthen international collaborative efforts to expedite the identification, evaluation, and implementation of malaria control strategies in sub-Saharan Africa and Asia.

- Identify the types of research and experimental approaches that are being sought to achieve the objectives.

The recipient institution will work with CDC on a package of research and policy into practice activities, mainly in India and Africa, which require a range of experimental approaches and activities. These include the development and evaluation of epidemiological survey tools for the rapid assessment of the burden of malaria in regions with low transmission, such as India. CDC has developed rapid assessment tools for Africa, providing the groundwork for this activity, but these tools need to be field tested and adopted to the Asian setting. Further experimental approaches include the design and coordination of multi-center trials of the treatment and prevention of malaria, and the application of specific statistical

methods that allow individual patient data meta-analysis of these multi-centre trials. Lastly, the global malaria in pregnancy research consortium requires a secretariat to coordinate the activities for the consortium.

Activities

Recipient activities for this program are as follows:

India and Asia:

1. Provide technical support to the Malaria Research Council (Jabalpur, Madhya Pradesh, India) for studies that assess the burden of malaria in pregnancy in India and for community and clinical studies by the Malaria Research Council related to MIP and malaria in children and adults.

2. Provide technical assistance to the WHO Southeast Asia Regional Office (SEARO) to assess the burden of malaria in pregnancy in select Asian countries and to develop appropriate standardized rapid assessment tools for this purpose.

Malaria in Pregnancy:

3. Serve as the global Secretariat for the MIP Consortium to:

• Provide a platform that enhances collaboration between research groups and international organizations working on malaria in pregnancy.

• Coordinate interventional research relevant to the control of malaria in pregnancy and to promote the quality of such research by encouraging use of standardized research methods among consortium members.

• Act as an advocate for malaria in pregnancy research and mobilize funding.

• Coordinate or participate in the development of research grants, and of research protocol development and execution of multi-centre trials.

• Identify, evaluate and implement appropriate new interventions for the treatment and prevention of malaria in pregnancy in Africa and Asia.

4. Determine the pharmacokinetics of new antimalarials for use in pregnancy.

Children:

5. Design and conduct studies of IPT in the post-discharge period (IPTpd) in children with severe malaria to determine whether IPTpd is effective in preventing rebound severe malaria and anemia.

HIV and Malaria:

6. Design and conduct studies to assess drug interaction between ARVs and antimalarials.

7. Provide technical support for grant writing, design, and conduct of studies that determine the role of malaria on HIV disease progression.

Capacity building:

8. Strengthen research capacity for endemic countries by providing diploma, Master's and PhD level training in tropical medicine to professionals from malaria endemic countries involved with CDC malaria-related activities in Africa and Asia.

9. Provide technical support to select malaria endemic sub-Saharan African countries to achieve RBM targets related to MIP and children.

Research synthesis and dissemination of results:

10. Coordinate research synthesis and provide individual patient data meta-analysis of the multi-centre trials in children and pregnant women.

11. Participate in the dissemination of research results or other activities through written publications, including peer-reviewed journals, oral presentations, or other means.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

• Provide technical assistance in the design and conduct of the activities, including evaluation methods and analytic approach.

• Provide consultation and assistance on methods for treatment of malaria, enhancing capacity at different levels (local, national) to increase use of prevention measures including insecticide treated bed nets, or prevention of malaria and its adverse consequences during pregnancy.

• Provide consultation and assistance on operations research study designs that may be identified and carried out by recipient or MIP Consortium partners.

• Participate as needed in data collection, data management, analysis of research data, interpretation, and dissemination of research findings.

• Provide assistance in design of the evaluations.

• Provide assistance in the development of any research protocols for Institutional Review Board (IRB) review by all cooperating institutions participating in research projects. The CDC IRB will review and approve the protocol initially and on at least an annual basis until research projects are completed.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: FY05.

Approximate Total Funding: $400,000. (This amount is an estimate, and is subject to availability of funds. This amount includes both direct and indirect costs.)

Approximate Number of Awards: 1.

Approximate Average Award: $400,000. (This amount is for the first 12-month budget period.)

Floor of Award Range: None.

Ceiling of Award Range: $400,000. (This ceiling is for the first 12-month budget period and includes both direct and indirect costs.)

Anticipated Award Date: August 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies, such as:

• Public nonprofit organizations.
• Private nonprofit organizations.
• Small, minority, women-owned businesses.
• Universities.
• Colleges.
• Research institutions.
• Hospitals.
• Community-based organizations.
• Faith-based organizations.
• Federally recognized Indian tribal governments.
• Indian tribes.
• Indian tribal organizations.
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
• Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Applicant must have experience and current activities coordinating international networks that are relevant to malaria in pregnancy research such as designation as a coordinating center or Secretariat; one or more of the networks must include European institutions.

Applicant must have the capacity to conduct meta-analysis, this may be through an well-established relationship with a group recognized for meta-analysis work.

Applicant must have experience and current capability to conduct malaria vector control research in partnership with other institutions.

Applicant must have an institutional link and access to a Liquid Chromatography/Mass Spectrometry bioanalytical facility. The facility must be recognized as a regional analytical reference site, preferably one that includes some malaria endemic countries in Africa and Asia.

Applicant must have experience in conducting studies of anti-retroviral drug interaction including the potential interactions between anti-retrovirals and anti-malarials.

Applicant must have long-term technical and research collaborative malaria-related activities in Africa and Asia; in addition, the applicant must have an established relationship with the Malaria Research Council of India and with the Kenya Medical Research Institute/Centers for Disease Control and Prevention program.

Applicant must have an established multi-level academic program suitable for training persons from malaria endemic countries in fields suitable for malaria research and which leads to a recognized diploma, certificate, and/or degree.

Applicant must have experience providing technical support to WHO or similar international organizations, endemic country research institutes and/or Ministries of Health for malaria in pregnancy development and program implementation.

Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

The applicant must document eligibility by providing the following documentation which should be attached in an appendix to the application: (a) Evidence of role with malaria research related consortium(s) including current activities and evidence of the inclusion of European-based organizations; (b) evidence of organizational capacity to conduct meta analysis; this may be a letter from the unit within the organization that outlines their capability and support for the defined work; (c) evidence of organization's past and current work conducted in partnership with other institutions to conduct malaria vector control research; (d) evidence of an institutional link and access to a Liquid Chromatography/Mass Spectrometry bioanalytical facility that is a recognized regional analytical reference site. This may be a letter of support from the facility; (e) evidence of experience in conducting studies of anti-retroviral drug interaction including the potential interactions between anti-retrovirals and anti-malarials; (f) evidence of current malaria research collaborations in sub-Sahara Africa including letters of support from the Malaria Research Centre (Jababur, Madhya Pradesh, India) for this work and the Kenya Medical Research Institute/Centers for Disease Control and Prevention program in Kisumu, Kenya; (g) evidence of an active multi-level academic program for training persons from malaria endemic countries, especially those in Africa; and (h) evidence of experience providing technical support to WHO or a similar international organization, endemic country research institutes and/or Ministries of Health for malaria in pregnancy development and program implementation.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

Additional Principal Investigator qualifications are as follows:

(a) Experience conducting field epidemiologic research in malaria in pregnancy in sub-Sahara Africa or Asia that resulted in one or more published articles in a peer reviewed journal.

(b) Experience mentoring local staff involved in an academic program from a developing country in Africa or Asia.

(c) Experience setting up and running a research consortium.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.* Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, telephone (301) 435–0714, e-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number,

access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: May 23, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.

Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required.)
- All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- You must obtain annual audit of these CDC funds (program-specific audit) by a U.S.—based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-RFA CI05–062, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, three additional copies of the application, and all appendices must be sent to: Dr. Trudy Messmer, RFA CI05–062, National Center for Infectious Diseases (NCID), CDC, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. E-mail: *TMessmer@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

The applicant is required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for the application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative, but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed experiments take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects?

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Budget: (This will not be scored) The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

The application will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NCID. An incomplete application or application that is non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

A complete and responsive application will be evaluated for scientific and technical merit by a Special Emphasis Panel comprised of external experts convened by the NCID Office of Extramural Research in accordance with the review criteria listed above. As part of the scientific merit review, the application will:

- Undergo a selection process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by CDC senior staff.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.

V.3. Anticipated Award Date

August 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR parts 74 and 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–22 Research Integrity.
- AR–24 Health Insurance Portability and Accountability Act Requirements.
- AR–25 Release and Sharing of Data.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research issues, contact: Dr. Trudy Messmer, Scientific Review Administrator, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Telephone: 404–639–3770. E-mail: *TMessmer@cdc.gov.*

For questions about peer review, contact: Ms. Barbara Stewart, Public Health Analyst, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Telephone: 404–639–3770. E-mail: *BStewart@cdc.gov.*

For financial, grants management, or budget assistance, contact: Steward Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2788. E-mail: *SHN8@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Additional background information can be found at: *http://www.cdc.gov/malaria/.*

Dated: April 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–7047 Filed 4–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1296–N2]

Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups; Extension of Nominations Deadline

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice extends the deadline for nominations of members to the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel). The original request for nominations was published in the **Federal Register** on February 25, 2005. (70 FR 9336) Six vacancies will exist on the Panel as of March 31, 2005.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital Outpatient Prospective Payment System (OPPS) through rulemaking.

The panel was recently rechartered for a 2-year period through November 21, 2006.

Nominations: Nominations will be considered if received no later than May 9, 2005. Mail or deliver nominations to the following address: CMS; Attn: Shirl Ackerman-Ross, Designated Federal Officer (DFO), Advisory Panel on APC Groups; Center for Medicare Management (CMM), Hospital & Ambulatory Policy Group (HAPG), Division of Outpatient Care (DOC); 7500 Security Boulevard, Mail Stop C4–05–17; Baltimore, MD 21244–1850.

Web site: For additional information on the APC Panel and updates to the Panel's activities, search our Web site at: *http://www.cms.hhs.gov/faca/apc/default.asp.*

Advisory Committees' Information Lines: You may also refer to the CMS Advisory Committee Information Hotlines at 1–877–449–5659 (toll-free) or 410–786–9379 (local) for additional information.

FOR FURTHER INFORMATION CONTACT: Persons wishing to nominate individuals to serve on the Panel or to obtain further information can also contact Shirl Ackerman-Ross, the DFO, at *APCPanel@cms.hhs.gov* or call 410–786–4474. News media representatives should contact the CMS Press Office at 202–690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended and redesignated by sections 201(h) and 202(a)(2) of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), respectively, to establish and consult with an expert, outside advisory panel on Ambulatory Payment Classification (APC) groups.

The Panel meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and the Administrator concerning the clinical integrity of the groups and their associated weights. CMS considers the technical advice provided by the Panel as we prepare the proposed rule that proposes changes to the OPPS for the next calendar year.

The Panel may consist of up to 15 representatives who are full-time employees (not consultants) of Medicare providers, which are subject to the OPPS, and a Chair.

The Administrator selects the Panel membership based upon either self-nominations or nominations submitted by providers or interested organizations.

The current Panel members are: (The asterisk [*] indicates a Panel member whose term expires on March 31, 2005.)

- E.L. Hambrick, M.D., J.D., a CMS Medical Officer
- Marilyn K. Bedell, M.S., R.N., O.C.N.
- Albert Brooks Einstein, Jr., M.D.
- Lee H. Hilborne, M.D.*
- Stephen T. House, M.D.*
- Kathleen P. Kinslow, C.R.N.A., Ed.D.*
- Mike Metro, R.N.*
- Sandra J. Metzler, M.B.A., R.H.I.A.
- Gerald V. Naccarelli, M.D.*
- Frank G. Opelka, M.D.
- Louis Potters, M.D.
- Lou Ann Schraffenberger, M.B.A., R.H.I.A.
- Judie S. Snipes, R.N., M.B.A., C.H.E.
- Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.
- Timothy Gene Tyler, Pharm.D.
- William A. Van Decker, M.D., J.D.*

Panel members serve without compensation, according to an advance written agreement; however, travel, meals, lodging, and related expenses are reimbursed in accordance with standard Government travel regulations. CMS has a special interest for ensuring that women, minorities, and the physically challenged are adequately represented on the Panel. CMS further encourages nominations of qualified candidates from those groups.

The Secretary, or his designee, appoints new members to the Panel from among those candidates determined to have the required expertise. New appointments are made in a manner that ensures a balanced membership.

II. Criteria for Nominees

All nominees must have technical expertise that enables them to participate fully in the work of the Panel. Such expertise encompasses hospital payment systems, hospital medical-care delivery systems, outpatient payment requirements, Ambulatory Payment Classification (APC) Groups, Physicians' Current Procedural Terminology Codes (CPTs), the use and payment of drugs and medical devices in the outpatient setting, and other forms of relevant expertise.

It is not necessary for a nominee to possess expertise in all of the areas listed, but each must have a minimum of 5 years experience and currently be employed full-time in his or her area of expertise. Members of the Panel serve overlapping 2, 3, and 4-year terms, contingent upon the rechartering of the Panel.

Any interested person may nominate one or more qualified individuals. Self-nominations will also be accepted. Each nomination must include a letter of nomination, the curriculum vita of the nominee, and a statement from the nominee that the nominee is willing to serve on the Panel under the conditions described in this notice and further specified in the Charter.

III. Copies of the Charter

To obtain a copy of the Panel's Charter, submit a written request to the DFO at the address provided or by e-mail at *APCPanel@cms.hhs.gov,* or call her at 410–786–4474. Copies of the

Charter are also available on the Internet at *http://www.cms.hhs.gov/faca.*

Authority: Section 1833(t)(9)(A) of the Act (42 U.S.C. 13951(t)(9)(A). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: March 31, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–6862 Filed 4–7–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0564]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (i) (OMB Control Number 0910–0133)—Extension

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341), directs FDA to issue regulations establishing definitions and standards of identity for food ''[w]henever * * * such action will promote honesty and fair dealing in the interest of consumers * * * ''. Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions and standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(i) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

In the **Federal Register** of January 13, 2005 (70 FR 2411), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR section	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total hours
130.17(c)	3	2	6	25	150
130.17(i)	4	2	8	2	16
Total					166

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received October 1, 2001, through September 30, 2004, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7021 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0565]

Agency Information Collection Activities; Submission for Office of Managment and Budget Review; Comment Request; State Petitions for Exemption From Preemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie

Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Petitions for Exemption From Preemption—21 CFR 100.1(d) (OMB Control Number 0910–0277)—Extension

Under section 403A(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343–1(b)), States may petition FDA for exemption from Federal preemption of State food labeling and standard-of-identity requirements. Section 100.1(d) (21 CFR 100.1(d)) sets forth the information a State is required to submit in such a petition. The information required under § 100.1(d) enables FDA to determine whether the State food labeling or standard-of-identity requirement satisfies the criteria of section 403A(b) of the act for granting exemption from Federal preemption.

In the **Federal Register** of January 13, 2005 (70 FR 2412), FDA published a 60-day notice requesting public comment on the information collection provisions. One comment was received. The comment expresses concern that it is unnecessary for FDA to maintain a ''program'' whereby States may petition the FDA to request exemption from preemption because States are not asking for exemptions. The comment asserts that the ''program'' wastes taxpayer dollars and suggests that FDA abolish it.

Under section 403A(b) of the act, States may petition FDA for exemption from Federal preemption of State food labeling and standard-of-identity requirements. FDA's regulations at § 100.1(d), the subject matter of this information collection, set forth the information a State is required to submit in such a petition. Section 100.1(d) implements a statutory information collection requirement. Therefore, FDA cannot abolish the regulations unless the statute is changed.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
100.1(d)	1	1	1	40	40

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.1(d) is insignificant because petitions for exemption from preemption are seldom submitted by States. In the last 3 years, FDA has not received any new petitions; therefore, the agency estimates that one or fewer petitions will be submitted annually. Because § 100.1(d) implements a statutory information collection requirement, only the additional burden attributable to the regulation has been included in the estimate. Although FDA believes that the burden will be insignificant, the agency believes these information collection provisions should be extended to provide for the potential future need of a State or local government to petition for an exemption from preemption under the provisions of section 403(A) of the act.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7022 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0541]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Exports: Notification and Recordkeeping Requirements—21 CFR Part 1 (OMB Control Number 0910–0482)—Extension

In the **Federal Register** of December 27, 2004 (69 FR 77255), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

The total burden estimate of 43,214 is based on the number of notifications received by the relevant FDA centers in fiscal year 2004, or the last year the figures were available.

The respondents to this information collection are exporters who have notified FDA of their intent to export unapproved products that may not be sold or marketed in the United States as allowed under section 801(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381). In general, the notification identifies the product being exported (e.g., name, description, and, in some cases, country of destination)

and specifies where the notification should be sent. These notifications are sent only for an initial export; subsequent exports of the same product to the same destination, or in the case of certain countries identified in section 802(b) of the act (21 U.S.C. 382), would not result in a notification to FDA.

The recordkeepers for this information collection are exporters who export human drugs, biologics, devices, animal drugs, foods, and cosmetics that may not be sold in the United States to maintain records demonstrating their compliance with the requirements in section 801(e)(1) of the act.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
1.101(d) and (e)	419	2.8	1,164	17	19,788

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
1.101(b) and (c)	324	2.8	901	26	23,426

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7023 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0124]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the submission of notifications of health claims or nutrient content claims based on authoritative statements of scientific bodies of the U.S. Government.

DATES: Submit written or electronic comments on the collection of information by June 7, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirement that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body (OMB Control Number 0910–0374)—Extension

Section 403(r)(2)(G) and (r)(3)(C) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 343(r)(2)(G) and (r)(3)(C)), as amended by the FDA Modernization Act of 1997 (FDAMA), provides that a food producer may market a food product whose label bears a nutrient content claim or a health claim that is based on an authoritative statement of a scientific body of the U.S. Government or the National Academy of Sciences. Under this section of the act, a food producer that intends to use such

a claim must submit a notification of its intention to use the claim 120 days before it begins marketing the product bearing the claim. In the **Federal Register** of June 11, 1998 (63 FR 32102), FDA announced the availability of a guidance entitled ''Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body.'' The guidance provides the agency's interpretation of terms central to the submission of a notification and the agency's views on the information that should be included in the notification. The agency believes that the guidance will enable food producers to meet the criteria for notifications that are established in section 403(r)(2)(G) and (r)(3)(C) of the act. In addition to the information specifically required by the act to be in such notifications, the guidance states that the notifications should also contain information on analytical methodology for the nutrient that is the subject of a claim based on an authoritative statement. FDA intends to review the notifications the agency receives to ensure that they comply with the criteria established by the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act/Basis of Burden	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
403(r)(2)(G) (nutrient content claims)	1	1	1	250	250
403(r)(3)(C) (health claims)	2	1	2	450	900
Guidance for notifications	3	1	3	1	3
Total					1,153

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims, nutrient content claims, and other similar notification procedures that fall under our jurisdiction. Because the claims are based on an authoritative statement of certain scientific bodies of the Federal Government or the National Academy of Sciences or one of its subdivisions, FDA believes that the information submitted with a notification will either be provided as part of the authoritative statement, or readily available as part of the scientific literature to firms wishing to make claims. Presentation of a supporting bibliography and a brief balanced account or analysis of this literature should be fairly straightforward.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7024 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0120]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Carbohydrate Content Claims on Food Labels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a consumer experimental study of carbohydrate content claims on food labels.

DATES: Submit written or electronic comments on the collection of information by June 7, 2005.

ADDRESSES: Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study of Carbohydrate Content Claims on Food Labels

The authority for FDA to collect the information for this experimental study derives from the Commissioner of Food and Drugs' authority, as specified in

section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(d)(2)).

The Nutrition Labeling and Education Act of 1990 (Public Law 101–535) amended the act. Section 403(r)(1)(A) of the act (21 U.S.C. 343(r)(1)(A)) was added under these amendments. This section states that a food is misbranded if it is a food intended for human consumption which is offered for sale and for which a claim is made on its label or labeling that expressly or implicitly characterizes the level of any nutrient of the type required to be declared as part of nutrition labeling, unless such claim uses terms defined in regulations by FDA under section 403(r)(2)(A) of the act.

In 1993, FDA published regulations that implemented the 1990 amendments. Among these regulations, § 101.13 (21 CFR 101.13) sets forth general principles for nutrient content claims (see 56 FR 60421, November 27, 1991, and 58 FR 2302, January 6, 1993). Other regulations in subpart D of part 101 (21 CFR part 101, subpart D) define specific nutrient content claims, such as ''free,'' ''low,'' ''reduced,'' ''light,'' ''good source,'' ''high,'' and ''more'' for different nutrients and calories, and identify several synonyms for each of the defined terms. In addition, § 101.69 establishes the procedures and requirements for petitioning the agency to authorize nutrient content claims.

The Food and Drug Administration Modernization Act of 1997 (Public Law 105–115) amended section 403(r)(2) of the act by adding sections 403(r)(2)(G) and (r)(2)(H) to permit nutrient content claims based on published authoritative statements by a scientific body when FDA is notified of such claims in accordance with the requirements established in these sections.

Current FDA regulations make no provision for the use of nutrient content claims that characterize the level of carbohydrate in foods because FDA has not defined, by regulation, terms for use in such claims. FDA has been petitioned to amend existing food labeling regulations to define terms for use in nutrient content claims characterizing the level of carbohydrate in foods.

The purpose of this proposed data collection is to help enhance FDA's understanding of consumer response to carbohydrate content claims on food labels. More specifically, this experimental study will help answer the following research questions:

1. Does the presence of a given front panel carbohydrate content claim suggest to consumers that the product is lower or higher in total carbohydrate, calories, and other nutrients (i.e., total fat, fiber, and protein) than the same product without the claim or with a different claim?

2. Does the presence of a given front panel carbohydrate content claim suggest to consumers who do not view the Nutrition Facts panel that the food is healthier or otherwise more desirable than the same product without the claim or with a different claim?

3. Does the presence of a front panel carbohydrate content claim suggest to consumers that the product is healthier than the same product without a claim or with a different claim despite information to the contrary available on the Nutrition Facts panel?

4. Do disclosure statements help consumers to draw appropriate conclusions about products with carbohydrate content claims on the front panel?

The label claims that would be tested in the proposed study include ''carb-free,'' ''low carb,'' ''x g net carbs,'' ''carbconscious,'' ''good source of carb,'' and ''excellent source of carb.'' The study would also include control labels (labels not bearing a claim). Where relevant, this study would test carbohydrate content claims with and without the following disclosure statements: (1) ''see nutrition information for fat content,'' (2) ''see nutrition information for sugar content,'' and (3) ''not a low calorie food.''

Participants would see mock food label images for one of three products: (1) A loaf of bread, (2) a can of soda, and (3) a frozen entrée. Three products were selected to understand whether consumer perception of carbohydrate content claims changes when the food is a traditionally high-carbohydrate, ubiquitous staple (bread), a beverage (soda), or a complete meal (frozen entrée).

Half of the participants would see only a front panel with a carbohydrate content claim or a control label not bearing a claim. The other half of the participants would see both the front panel and the back panel, which includes the Nutrition Facts information. In the Nutrition Facts panel for the bread and frozen entrée, the calorie, fat, and fiber content would vary to create more and less healthful product profiles. Total carbohydrate content would also vary. On the Nutrition Facts panel for the soda, the sugar content, and therefore total carbohydrate content and calories, would vary.

The proposed experimental study would be conducted online via the Internet. The sample would be drawn from an existing consumer opinion panel developed and maintained by the research firm Synovate. Synovate's Internet panel consists of 600,000 households that have agreed to participate in research studies conducted through the Internet.

Panel members are recruited by a variety of means designed to reflect all segments of the population. They are required to have a computer with Internet access. Typical panel members receive three or four invitations per month to participate in research projects. Periodically, Synovate gives incentives of small monetary value to panel members for their participation. Studies begin with an e-mailed invitation to the sampled respondents.

For this proposed study, Synovate's Internet panel would be screened for diet status. Twenty-five percent of the households in the Internet panel (150,000 households) are expected to respond to the screening questions. Based on information gathered from the screening process, a sample would be drawn to allow for 2,500 participants in each of 4 groups: (1) Diabetic consumers, (2) consumers who try to eat a diet low in carbohydrate (but who are not diabetic), (3) consumers who try to eat a diet high in carbohydrate, and (4) consumers who are not part of any of the preceding three groups. Assignment to a condition would be random within each of the four groups of consumers. Of the members of the Internet panel who respond to the screening questions and are selected for the study (18,200 panel members), 55 percent (10,000 panel members) are expected to participate in the experiment.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Cognitive interviews	9	1	9	0.5	5

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Pretest	150	1	150	0.17	26
Screener	150,000	1	150,000	0.01	1,500
Experiment	10,000	1	10,000	0.12	1,200
Total					2,731

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with previous consumer studies. The cognitive interviews are designed to ensure that the questions are worded as clearly as possible to consumers. The cognitive interviews would take each respondent 30 minutes to complete. The pretest of the final questionnaire is designed to minimize potential problems in the administration of the interviews. The pretest is predicted to take each respondent approximately 10 minutes to complete.

The screener would be sent via the Internet to the entire 600,000 household Internet panel, of which 25 percent (150,000 households) are predicted to respond. The brief screener is predicted to take each respondent 36 seconds to complete.

The experiment would be conducted with 10,000 panel members. The experiment is predicted to take each respondent approximately 7 minutes to complete.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7026 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0032]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (§ 13.87(a) (21 CFR 113.87(a))).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any

instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

In the **Federal Register** of February 7, 2005 (70 FR 6445), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of the collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 2541 (registration)	108.25 and 108.35	585	1	585	0.17	99
FDA 2541a (process filing)	108.25 and 108.35	1,778	9	16,002	0.333	5,329
FDA 2541(c)	108.35	124	10	1,240	0.75	930
Total						6,358

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
Parts 113 and 114	7,915	1	7,915	250	1,978,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation, or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross reference recordkeeping requirements contained in parts 113 and 114.

There are approximately 7,915 food processing establishments, both foreign and domestic, registered as processors of acidified foods or thermally processed low-acid foods in hermetically sealed containers. Four FDA staff persons who are experienced in actual food processing plant operations and familiar with the regulations reviewed the recordkeeping procedures used by the industry.

Standardized timeframe requirements for conducting the recordkeeping procedures do not exist but it is estimated to take 250 hours per establishment to comply with the recordkeeping requirements in parts 108, 113, and 114. This compares satisfactorily when based upon firsthand food processing plant experience, individual estimates of the timeframes, and the frequency of recordkeeping.

Dated: April 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–7028 Filed 4–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Division of Perinatal Systems and Women's Health—Forms for the Guidance for Healthy Start Program Application and Other Reports—New

The Application Guidance for grants within the Division of Healthy Start and Perinatal Services (DHSPS) is used annually by all community based Healthy Start organizations and agencies applying for funding (either continued or new), and in preparing the required annual report. The guidance provides guidelines to the organizations and agencies on how to apply for Healthy Start funds. Included in the guidance are a number of data collection forms, which are used annually by organizations that have applied for and/

or are receiving Healthy Start funding. It is proposed that additional data be collected and reported to provide increased program information. The completion of the new and existing forms by all applicants has an estimated overall burden of 500 hours, or approximately five (5) hours per respondent. The burden estimate for this activity is based upon information provided by current and past funded Healthy Start grantees, as well as previous experience in completing the current forms.

The estimated response burden is as follows:

Application and annual report	Estimated number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Community Based Organizations and Agencies	100	1	5	500

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of notice.

Dated: April 1, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–7018 Filed 4–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HHS Approval of Professional Organizations and States' Standards for Certification

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Solicitation of comments.

SUMMARY: The Health Resources and Services Administration's (HRSA) Healthcare Systems Bureau, Division of Healthcare Preparedness Poison Control Program, provides supplemental funding to Poison Control Centers (PCCs) across the United States, promotes universal access to PCC services, and encourages the enhancement and improvement of poison education, prevention, and treatment. To receive funding from HRSA, PCCs must meet certain certification requirements. The purpose of this solicitation of comments is to assist HRSA in establishing criteria/guidelines to approve professional organizations and State governments' certification standards for PCCs.

DATES: To be considered, written comments should be postmarked no later than June 7, 2005.

ADDRESSES: Please send all comments to HRSA's Division of Healthcare Preparedness, Healthcare Systems Bureau, Attention: Maxine Jones, Room 13–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Maxine Jones, HRSA, HSB, Division of Healthcare Preparedness, (301) 443–6192, fax (301) 443–4922, or e-mail *mjones@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In February 2000, Congress enacted the Poison Control Center Enhancement and Awareness Act, Pub. L. No. 106–174. This Act authorized funding to establish a national toll-free number to access Poison Control Center (PCC) services, a nationwide poison prevention media campaign, and a grant program to achieve financial stability of PCCs. In addition, the Act directed the Secretary of HHS to: (1) Develop standard education programs; (2) develop standard patient management protocols for commonly encountered exposures; (3) improve and expand the poison control data collection systems; (4) improve national toxic exposure surveillance, and (5) expand the physician/medical toxicologist supervision of PCCs. This Act was amended by Public Law 108–194, the Poison Control Enhancement and Awareness Act Amendments of 2003, which directs the Secretary of HHS to improve the capacity of poison control centers to answer high volumes of calls during times of national crisis, in addition to the activities listed in the original Act.

The grant program that was established provides funding for financial stabilization, certification, and incentive grants. Financial stabilization grants assist with financial stabilization and the improvement of services in PCCs that already meet American Association of Poison Control Centers (AAPCC) certification standards. Certification grants assist uncertified centers in efforts to attain certification status in addition to promoting enhancement of services. Incentive grants are awarded to PCCs that are working collaboratively and innovatively to improve poison control systems and services.

In general, PCCs must meet the certification requirements listed in Public Law 108–194 sec. 1273(c) to receive funding from HRSA. One way PCCs can fulfill this requirement is if the PCC ''has been certified by a professional organization in the field of poison control, and the Secretary has approved the organization as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.'' The second way PCCs can fulfill this requirement is if the PCC ''has been certified by a State government, and the Secretary has approved the State government as having in effect standards for certification that reasonably provide for the protection of the public health with respect to poisoning.'' (Pub. L. No. 108–194 sec. 1273(c)).

Solicitation of Comments

The HRSA is seeking public input regarding guidelines by which the Secretary shall approve professional organizations and State governments as having in effect standards for PCC certification. Respondents are asked to submit recommended guidelines for approving professional organizations and State governments' standards for certification, per Public Law 108–194 sec. 1273(c).

Written comments should be limited to no more than 10 double-spaced pages or 5 single-spaced pages and should contain the name, address, telephone, and fax numbers, and any organizational affiliation of the persons providing written comments. Respondents may be contacted by the Poison Control Program, HRSA, to answer questions regarding their submitted comments. We are particularly interested in comments which address but are not limited to the following issues:

1. Modeling the guidelines after certification requirements that are currently being used to certify PCCs;

2. Elements of approval that the guidelines should include and justification of the elements;

3. Guidelines applying to all State governments;

4. Guidelines applying to all professional organizations; and

5. Inclusion of re-certification as an element of certification.

Dated: March 31, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–7017 Filed 4–7–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Ocular Toxicity Scientific Symposia: Mechanisms of Chemically-Induced Ocular Injury and Recovery and Minimizing Pain and Distress in Ocular Toxicity Testing

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Meeting announcement.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the NICEATM announce two upcoming scientific symposia entitled, ''Mechanisms of Chemically-Induced Ocular Injury and Recovery'' and ''Minimizing Pain and Distress in Ocular Toxicity Testing.''

DATES: The first symposium, ''Mechanisms of Chemically-Induced Ocular Injury and Recovery,'' will be held on May 11 and 12, 2005. The second symposium, ''Minimizing Pain and Distress in Ocular Toxicity Testing,'' will be held on May 13, 2005. In order to facilitate planning for this meeting, persons wishing to attend the symposia are asked to register via the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*) by May 2, 2005.

ADDRESSES: Both symposia will be held at the National Institutes of Health, Natcher Conference Center, 45 Center Drive, Bethesda, MD, 20892. An updated agenda and other information will be available on the NICEATM/ICCVAM Web site (*http://iccvam.niehs.nih.gov*) and can also be obtained from NICEATM (*see* **FOR FURTHER INFORMATION CONTACT** below).

FOR FURTHER INFORMATION CONTACT: All correspondence should be submitted to the Director of NICEATM (Dr. William S. Stokes, NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

The symposium, ''Mechanisms of Chemically-Induced Ocular Injury and Recovery,'' will review the state-of-the-science and understanding of the pathophysiology and mechanisms of chemically-induced ocular injury and recovery (reversibility vs. irreversibility). The symposium will seek to identify research needed to address current knowledge gaps and that will advance the development and validation of test systems for regulatory testing that provide for protection of human health while reducing, refining (less pain and distress), and/or replacing the use of animals.

The symposium, ''Minimizing Pain and Distress in Ocular Toxicity Testing,'' will review current understanding of the sources and mechanisms of pain and distress in ocular toxicity testing; identify current best practices for preventing, recognizing, and alleviating ocular pain and distress; and identify additional research, development, and validation studies necessary to support scientifically valid ocular testing procedures that avoid pain and distress.

Preliminary Agenda

Mechanisms of Chemically-Induced Ocular Injury and Recovery, May 11 and 12, 2005, National Institutes of Health, Natcher Conference Center, Room E1/E2, 45 Center Drive, Bethesda, MD 20892 (A photo ID is required to access the NIH campus).

Day 1 Wednesday, May 11, 2005

8:30 a.m.

- Welcome and Introduction of Symposium Objectives
- Session 1—Overview of Recent Initiatives
- Session 2—Current Ocular Injury and Toxicity Assessments
- Session 3—Mechanisms and Biomarkers of Ocular Injury and Recovery
- Discussion

5 p.m.

Adjourn Day 1

Day 2 Thursday, May 12, 2005

8:30 a.m.

- Session 4—In Vitro Models of Ocular Injury and Recovery
- Discussion
- Session 5—In Vivo Quantitative Objective Endpoints to Support Development and Validation of Predictive In Vitro Models
- Discussion
- Summary of Symposium Discussions

5 p.m.

Adjourn Meeting

Minimizing Pain and Distress in Ocular Toxicity Testing, May 13, 2005, National Institutes of Health, Natcher Conference Center, Balcony B, 45 Center Drive, Bethesda, MD 20892 (A photo ID is required to access the NIH campus).

8:30 a.m.

- Welcome and Introduction of Symposium Objectives
- Session 1—Recognition and Sources of Pain in Ocular Injuries and Safety Testing
- Discussion: Clinical Signs, Lesions and Other Biomarkers of Pain and Distress in Animals
- Session 2—Alleviation and Avoidance of Ocular Injury and Pain
- Discussion
- Session 3—Biomarkers that Can Serve as Earlier Humane Endpoints for Ocular Studies
- Discussion
- Closing Remarks

5 p.m.

Adjourn Meeting

Attendance and Registration

The symposia will be held on May 11–13, 2005, from 8:30 a.m. until adjournment and are open to the public with attendance limited only by the space available. Individuals who plan to attend are strongly encouraged to register with NICEATM via the NICEATM/ICCVAM Web site (*http://iccvam.niehs.nih.gov*) by May 2, 2005. A map of the NIH campus, including visitor parking, is available at *http://www.nih.gov/about/visitor/index.htm#directions.* Please note that a photo ID is required to access the NIH campus. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, are asked to notify NICEATM at least 7 business days in advance of the meeting (*see* **FOR FURTHER INFORMATION CONTACT** above).

Availability of Meeting Materials

An updated agenda and other additional information will be available on the ICCVAM Web site and upon request from NICEATM (*see* **FOR FURTHER INFORMATION CONTACT** above). Those persons who register by the deadline will be provided with materials for the meeting upon on-site check-in at the meeting.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products while refining (less pain and distress), reducing, and replacing animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm)* establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new, improved, and alternative test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: March 31, 2005.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 05–7002 Filed 4–7–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, R13's Conference Grants.

Date: May 4, 2005.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Hua-Chuan SIM, MD, Scientific Review Administrator, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7004 Filed 4–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Abuse of Painkillers.

Date: April 11, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D MSC 7759, Bethesda, MD 20892, 301–451–9956, *gboyd@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELSI Member Conflict SEP.

Date: April 14, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5636 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–C 90 S: Genetics and Sleep Disorders.

Date: April 19, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jay Cinque, MS Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, 301–435–1252, *cinquej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2005.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7005 Filed 4–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March

28, 2005, 4 p.m. to March 28, 2005, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the Federal Register on March 1, 2005, 70 FR 9959–9961.

The meeting will be held April 2005, from 12 p.m. (noon) to 1 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: March 31, 2005.

LeVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–7006 Filed 4–7–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2005 Funding Opportunity

AGENCY: Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to make supplemental Minority Fellowship Program awards to the American Nurses Association (ANA), the American Psychiatric Association (ApA), the American Psychological Association (APA), and the Council on Social Work Education (CSWE).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), intends to make awards for up to two years to the American Nurses Association (ANA), the American Psychiatric Association (ApA), the American Psychological Association (APA), and the Council on Social Work Education (CSWE). The total funding available for these awards is $630,000. This is not a formal request for applications. Assistance will be provided only to the aforementioned organizations based on the receipt of satisfactory applications that are approved by an independent review group.

Funding Opportunity Title: SM–05–018.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Sections 509, 516 and 520A of the Public Health Service Act, as amended.

Justification: SAMHSA's Center for Mental Health Services (CMHS) intends to award supplemental grants to the American Nurses Association (ANA), the American Psychiatric Association (ApA), the American Psychological Association (APA), and the Council on Social Work Education (CSWE) to expand/enhance grant activities funded under the Minority Fellowship Program (MFP) grant announcement (SM–04–001). The goal of the MFP program is to facilitate entry of ethnic minority students into mental health and substance abuse disorders careers and to increase the number of psychology, psychiatry, nursing and social work professionals trained to teach, administer, conduct services research, and provide direct mental health/substance abuse services to ethnic minority populations. The lack of trained ethnic minority professionals is considered to be a significant factor in the lack of access to utilization of minority communities to appropriate behavioral health and substance abuse treatment and prevention services. The amount of funds provided is not sufficient to meet the demand for stipends to qualified individuals. These supplemental awards will increase the number of ethnic minority students provided stipends. Eligibility for this funding is limited to the four organizations that received funding under the Minority Fellowship Program in FY 2004 because these four organizations currently have in place the necessary infrastructure for the outreach, recruitment, processing and monitoring of applications from students. This infrastructure allows the supplemental funds to be used primarily for stipends. Thus, this limitation is the most cost-effective approach for maximizing the number of racial and ethnic minority students who receive stipends for training in underserved disciplines.

FOR FURTHER INFORMATION CONTACT: Paul Wohlford, Ph.D., Substance Abuse and Mental Health Services Administration, CMHS, 1 Choke Cherry Road, Room 2–1113, Rockville, MD 20857; telephone: (240) 276–1759; E-mail: *paul.wohlford@samhsa.hhs.gov*; or Herbert Joseph, Ph.D., Substance Abuse and Mental Health Services Administration, CMHS, 1 Choke Cherry Road, Room 2–1120, Rockville, MD 20857; telephone: (240) 276–1742; E-mail: *herbert.joseph@samhsa.hhs.gov*.

Dated: April 1, 2005.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05–7003 Filed 4–7–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3206–EM]

Maine; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Maine (FEMA–3206–EM), dated March 14, 2005, and related determinations.

DATES: *Effective Date:* April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maine is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 14, 2005:

Kennebec and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–7010 Filed 4–7–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3207–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3207–EM), dated

March 30, 2005, and related determinations.

DATES: *Effective Date:* March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 30, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Hampshire, resulting from the record and/or near record snow on January 22–23, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

The counties of Belknap, Carroll, Cheshire, Grafton, Hillsborough, Merrimack, Rockingham, Strafford, and Sullivan for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–7008 Filed 4–7–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3208–EM]

New Hampshire; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New Hampshire (FEMA–3208-EM), dated March 30, 2005, and related determinations.

DATES: *Effective Date:* March 30, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 30, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New Hampshire, resulting from the record snow on February 10–11, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared emergency:

The counties of Carroll, Cheshire, Coos, Grafton, and Sullivan for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–7009 Filed 4–7–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988

court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 31, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–6720 Filed 4–7–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compacts.

SUMMARY: This notice publishes approval of the Tribal-State Compacts between the State of Oklahoma and the Muscogee (Creek) Nation and the Cheyenne Arapaho Tribe.

EFFECTIVE DATE: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. These Compacts authorize the Muscogee (Creek) Nation and the Cheyenne Arapaho Tribe to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games.

Dated: March 25, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–6986 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0012

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from States and local government agencies and from qualified nonprofit corporations and associations who submit an Application for Land for Recreation or Public Purposes (Form No. 2740–1) to obtain public lands and benefits for recreational and public purposes. The BLM uses the information to determine if an applicant meets the requirements of the Recreation and Public Purpose Act of June 14, 1926.

DATES: You must submit your comments to BLM at the address below on or before June 7, 2005. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include: ''ATTN: 1004–0012'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Lands and Realty Group, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Recreation and Public Purpose Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), authorizes the Secretary of the Interior to lease or convey certain public lands to States and local government agencies, and to qualified nonprofit corporations and associations for recreational and public purposes under specified conditions. The term ''public purpose'' means providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety, or welfare. We permit use of lands or facilities for habitation, cultivation, trade, or manufacturing only when necessary for an integral to the essential part of public purpose. 43 CFR part 2740 regulations provide guidelines to lease or convey public lands under the Act.

The Act applies to all public lands, except lands within national forests, national parks and monuments, national wildlife refuges, Indian lands, and acquired lands. We lease revested Oregon and California Railroad grant lands, and reconveyed Coos Bay Wagon Road grant lands in western Oregon only to State and Federal instrumentalities, political subdivisions, and to municipal corporations.

Lease periods may be for any length of time, but must not exceed 20 years for nonprofit entities and 25 years for Federal, States and local governmental entities. We issue leases subject to appropriate environmental and legal stipulations and leases must contain provisions for compliance with:

(1) Nondiscrimination based on race, color, sex, age, religion, or national origin;

(2) An approved plan of management and development upon which BLM based the lease decision (we may cancel a lease for nonuse or a use (without prior BLM consent) other than for which BLM issued the lease);

(3) The Federal Government may reserve the standing timber, use of

water, or place other limitations on the use of natural resource; and

(4) Other reasonable stipulations we may require as part of the consideration for the moderate charge for land.

BLM issues patents under the Act that convey a restricted title containing provisions which, if not complied with, may result in reversion of the title to the United States. These provisions are:

(1) Nondiscrimination clauses providing that the patentee may not restrict or permit restriction on the use of the lands conveyed or facilities because of race, color, sex, age, religion, or national origin;

(2) A provision that, if the patentee or its successor in interest attempts to transfer title or control over the land to another or the land is devoted to a use (without prior BLM consent) other than for what it was conveyed, title will revert to the United States;

(3) The patent must stipulate the lands in perpetuity are used for the purposes for which the lands are acquired (the lease or patent may stipulate that certain provisions of the development plan, including the management plan, may be subject to review by the Secretary of the Interior or his delegate); and

(4) All minerals are reserved to the United States. After receiving the form, the BLM will:

(1) Determine if the applicant's proposal conforms with land use planning, review land status to determine if the lands are subject to application, and determine if the application meets all requirements of the law and regulations;

(2) Review the development and management plans to determine adequacy and effectiveness, and evaluate the construction schedule and estimated financing to ensure they are realistic and practicable;

(3) Secure the views of other agencies that have an interest in the lands, including State and local planning and zoning departments;

(4) Check for the presence of unpatented mining claims (R&PP leases and conveyances cannot be issued when mineral claims are present) and, if necessary to determine the validity of a mining claim. The cost of the determination will be the responsibility of the applicant;

(5) Conduct a field examination and other investigations to gather information and data on the environmental considerations and proper classification of the lands;

(6) Publish a notice to solicit views and comments from the public concerning the proposal.

Based on past experience processing these applications, BLM estimates the public reporting burden for completing and providing the information for Form 2740–1 is 40 hours. BLM estimates that we receive approximately 20 applications annually, with a total annual burden of 800 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form No. 2730–1 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: April 5, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–7068 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–83–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0025

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from all owners of unpatented mining claims or mill sites who desire to apply for a mineral patent to their mining claim or mill site. The BLM uses the information to determine the right to a mineral patent and to secure a settlement of all disputes concerning the property in order to issue the patent to the rightful owner.

DATES: You must submit your comments to BLM at the address below on or before June 7, 2005. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN:1004–0025'' and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Roger A. Haskins, Solid Minerals Group, on (202) 452–0355 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haskins.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) require that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden of those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Under the General Mining Law (30 U.S.C. 29, 30, and 39), we grant the opportunity to obtain legal title (patent) to the land of those who explore for and locate valuable mineral deposits on the public domain lands. BLM implements the patent process under regulations 43 CFR 3860. Under 43 CFR 3870, any rival claimant with overlapping claims to the land applied for or anyone challenging BLM to issue the patent based on failure to follow the law or regulations must file with BLM certain required statements and evidence supporting the challenge or we will statutorily dismiss the challenge. The implementing regulations require a patent applicant to provide the following information:

(1) Mineral survey application. Under 43 CFR Subpart 3861, the holder of a claim must submit to BLM a mineral survey for all lode claims, most mill sites, and placer claims located upon unsurveyed public lands, as a requisite to apply for a patent. BLM uses Form 3860–5 to collect the mining claim or site recording, chain-of-title, and

geographic location information so that we can authorize a Deputy U.S. Mineral Surveyor to survey the claims or sites.

(2) Mineral patent application. Under 43 CFR 3862, 3863, and 3864, a mineral patent applicant must file certain proofs of ownership to demonstrate clear title to the claim(s) or millsite(s), bonafide of development, and the existence of a commercial mineral deposit subject to the General Mining Law of 1872, as amended. BLM used Form 3860–2 for title verification until Congress implemented a moratorium on new mineral patent applications.

Based on BLM's experience administering the General Mining Law, we estimate the public reporting burden to complete Form 3860–5 is one hour and for adverse claims or protests it is two hours. BLM estimates that we receive 28 mineral survey applications and 3 protests annually, with a total annual burden of 62 hours. The respondents are owners of unpatented mining claims and mill sites upon the public lands, reserved mineral lands of the United States, National Forests, and National Parks. The frequency of response is once for each mineral survey, each application for patent, and each filing of a protest or adverse claim. Since October 1, 1994, Congress passes an annual moratorium which prevents the BLM from processing mineral patent applications unless the applications were grandfathered under the initial legislation. This moratorium does not affect mineral surveys, contests, or protests to existing mineral patent applications.

Any member of the public may request and obtain, without charge, a copy of BLM Form 3860–5 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of a public record.

Dated: April 5, 2005.

Ian Senio,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 05–7069 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–04–5101–ER–F345; N–78803]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and Initiate the Public Scoping Process

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Ely Field Office, will be directing the preparation of an EIS and conducting public scoping meetings for the proposed Clark, Lincoln and White Pine Counties Groundwater Development Project.

DATES: The scoping comment period will commence with the publication of this notice and will end 60 days after its publication. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS should be submitted in writing to the address below and will be accepted throughout the scoping period. This scoping notice will be distributed by mail on or about the date of this notice. All public meetings will be announced through the local news media, newsletters, and the BLM Web site at *http://nv.blm.gov.*

ADDRESSES: Please mail written comments to the BLM, Ely Field Office, HC 33 Box 33500, Ely, Nevada 89301, (fax (775) 289–1910). Comments submitted during this EIS process, including names and street addresses of respondents will be available for public review at the Ely Field Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to the EIS mailing list, contact Bruce Flinn at the Ely Field Office (see **ADDRESS** above), telephone (775) 289–1903.

SUPPLEMENTARY INFORMATION: The proposed Clark, Lincoln and White Pine Counties Groundwater Development Project is proposed by the Southern Nevada Water Authority and would be located in central and eastern Nevada, in Clark, Lincoln and White Pine Counties. The proposed project would develop and convey groundwater rights as they are permitted by the Nevada Division of Water Resources to the Southern Nevada Water Authority (SNWA) in Coyote Spring, Tikaboo North, Delamar, Dry Lake, Cave, Spring, and Snake Valleys. The volume of water to be transported through the proposed facilities could range between approximately 125,000 and 200,000 acre-feet per year.

The proposed facilities include groundwater production wells, water pipelines, pumping stations, and water treatment, power, and other appurtenant facilities. The facilities would be generally located within and/or across the following public lands:

Mt. Diablo Meridian (MDM):

- Cave Valley—Townships 5–9 North and Ranges 63–64 East, various sections
- Coyote Spring Valley—Townships 9–15 South and Ranges 62–63 East, various sections
- Delamar Valley—Townships 4–8 South and Ranges 62–64 East, various sections
- Dry Lake Valley—Townships 1–4 South, Townships 1–7 North and Ranges 63–65 East, various sections
- Garnet Valley—Townships 17–18 South and Range 63 East, various sections
- Hamlin—Township 9 North and Range 69 East, various sections
- Hidden Valley (north)—Townships 15–17 South and Range 63 East, various sections
- Lake Valley—Townships 6–7 North and Ranges 65–67 East, various sections
- Las Vegas Valley—Township19 South and Ranges 62–63 East, various sections
- Pahranagat Valley—Townships 4–6, 8 and 9 South and Ranges 59–63 East, various sections
- Snake Valley—Townships 9–10 North and Ranges 69–70 East, various sections
- Spring Valley—Townships 7–16 North, and Ranges 65–68 East, various sections
- Tikaboo Valley North—Townships 6–7 South, Ranges 58–59 East, various sections
- Steptoe Valley (power line)—Townships 14–17 North, Ranges 64–65 East, various sections

A map of the proposed project is available for viewing at the Bureau of

Land Management, Ely Field Office, 702 North Industrial Way, Ely, NV 89301.

Dated: February 2, 2005.

Gene A. Kolkman,

Ely Field Manager.

[FR Doc. 05–7104 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–NV–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Conservation Helium Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice Implementing a Supplemental Conservation Helium Sale.

SUMMARY: The purpose of this action is to continue implementation of the terms of the Helium Privatization Act (HPA) of 1996 dealing with the disposal of the Conservation Helium Reserve. The HPA requires the Department of the Interior to *offer for sale,* beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The Department of the Interior, in consultation with the private helium industry, has determined that private companies, with refining capacity along the crude helium pipeline, will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. Given the current market, Conservation Helium sold in this sale will cause minimal market disruption.

DATES: Submit bids and other documentation as required in Notice on or before May 9, 2005.

ADDRESSES: You may submit your bids and other documentation as required in this Notice to the Bureau of Land Management; Amarillo Field Office; 810 S. Fillmore, Suite 500; Amarillo, TX 79101–3545; Attention: Crude Helium Sales Analyst.

FOR FURTHER INFORMATION CONTACT: Connie H. Neely, (806) 356–1027. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1.01 What Is the Purpose of the Sale?

The purpose of this sale is to continue implementation of the terms of the HPA of 1996 dealing with the disposal of the Conservation Helium Reserve. The HPA requires the Department of the Interior to *offer for sale,* beginning no later than 2005, a portion of the Conservation Helium stored underground at the Cliffside Field, north of Amarillo, Texas. The Department of the Interior, in consultation with the private helium industry, has determined that private companies, with refining capacity along the crude helium pipeline, will need a supply of helium in excess of that available from their own storage accounts and that available from crude helium extractors in the region. This is a supplemental sale of the excess helium offered for sale in September 2004 that the Department will conduct to dispose of the Conservation Helium stored underground at the Cliffside Field. The annual sales and Supplemental Sale are being conducted in a manner intended to prevent pure helium market disruptions from occurring to end users; shortages of crude helium to pure helium refiners; and an oversupply of crude helium on the market for crude helium extractors. Subsequent sales may be adjusted as needed.

1.02 What Terms Do I Need To Know To Understand This Sale?

Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

Annual Conservation Helium Sale—The sale of a certain volume of Conservation Helium to private entities conducted annually beginning no later than 2005.

Bidder—Any entity or person who submits a request for purchase of a volume of the Annual Conservation Helium Sale and has met the qualifications contained in part 1.05 in this Notice.

BLM—The Bureau of Land Management.

Conservation Helium—The crude helium purchased by the U.S. Government under the authority of the Helium Act of 1960 and stored underground in the Cliffside Field.

Crude Helium—A partially refined gas containing about 70 percent helium and 30 percent nitrogen. However, the helium concentration may vary from 50 to 95 percent.

Crude Helium Refiners—Those entities with a capability of refining crude helium and having a connection point on the crude helium pipeline and a valid Helium Storage Contract as of the date of a Conservation Helium Sale.

Excess Volumes—Allocated sale volumes not requested by the Crude Helium Refiners.

Helium Storage Contract—A contract between the BLM and a private entity allowing the private entity to store crude helium in underground storage at the Cliffside Field.

HPA—The Helium Privatization Act of 1996.

In-Kind Crude Helium—Conservation Helium purchased by private refiners in exchange for like amounts of pure helium sold to Federal agencies and their contractors in accordance with the HPA.

MMcf—One million cubic feet of gas measured at standard conditions of 14.65 pounds per square inch (psi) and 60° F.

Mcf—One thousand cubic feet of gas measured at standard conditions of 14.65 psi and 60° F.

Non-Allocated Sale—That portion of the annual sale volume of Conservation Helium that will be offered to all qualified Bidders.

Supplemental Sale—If all the Conservation Helium offered for sale is not sold during the annual sale, then an additional sale will be conducted to offer for sale the remaining volumes not purchased during the annual sale.

1.03 What Volume of Conservation Helium Will Be Offered in the Supplemental Conservation Helium Sale?

The volume of helium available for this sale is 1,610 MMcf. In accordance with the HPA, this volume was determined by subtracting the volume sold in the October 2004 sale from the total volume offered for sale.

1.04 At What Price Will the Conservation Helium Be Sold?

The Conservation Helium will be sold at the same price as In-Kind Crude Helium. In accordance with the HPA, this price covers helium debt repayment and its escalation by the Consumer Price Index since the helium debt was frozen in 1995. Additionally, the price includes administrative and storage costs associated with the Conservation Helium calculated on a per Mcf basis. For Fiscal Year 2005 that price is $54.50 per Mcf.

1.05 Am I Qualified To Purchase Conservation Helium at This Sale?

Any person, firm, partnership, joint stock association, corporation, or other domestic or foreign organizations operating partially or wholly within the United States who meets one or more of the following requirements is qualified to submit a purchase request:

- Operates a helium purification plant within the U.S., or

• Operates a crude helium extraction plant within the U.S., or

• Is a wholesaler of pure helium or purchases helium for resale within the U.S., or

• Is a consumer of pure helium within the U.S., or

• Has an agreement with a helium refiner to provide its helium processing needs, commonly referred to as a ''tolling agreement.''

All entities requesting participation in the Non-Allocated Sale must submit proof of being qualified to purchase Conservation Helium and must either have a Helium Storage Contract with the BLM or have a third-party agreement in place with a valid storage contract holder so that all Conservation Helium sold to the Bidder will be properly covered by a Helium Storage Contract (including associated storage charges).

1.06 When Will the Conservation Helium Be Offered for Sale?

The BLM, Amarillo Field Office, will accept requests for purchase of Conservation Helium from final publication of this Notice until May 9, 2005. On the next business day after this Notice closes, requests to purchase Conservation Helium will be opened and evaluated. Upon evaluation, volumes of this Conservation Helium Sale will be apportioned and allocated according to the sale rules described in this Notice.

1.07 What Must I Do To Submit a Request for Purchase?

You must submit the following information to the BLM, Amarillo Field Office:

• Billing address information and name(s) of principle officers of the company.

• Proof of being an entity qualified to purchase Conservation Helium at this sale as defined in part 1.05 above. Documents such as invoices for sale or purchase of helium, Helium Storage Contracts, or other relevant documents may be submitted as proof of qualification.

• The amount (in Mcf) of Conservation Helium requested.

• Certified check or money order in the amount of $1,000 made payable to the Bureau of Land Management. This money will be used to cover administrative expenses to conduct this sale and is nonrefundable.

1.08 Where Do I Send My Request for Purchases?

All requests for purchase of helium, as part of this sale, must be sent by certified mail to: Bureau of Land Management, Amarillo Field Office, 810 S. Fillmore, Suite 500, Amarillo, TX 79101–3545, Attention: Crude Helium Sales Analyst.

1.09 When Do I Need to Submit Payment for Any Conservation Helium Sold to Me?

Successful purchasers will submit payments according to the following schedule:

• 50 percent by April 30, 2005, or 30 days after notification of the award volumes, whichever is later.

• 50 percent by July 30, 2005.

Conservation Helium will not be transferred to the purchaser's storage account until payment is received for that portion. Successful purchasers may, at their option, accelerate the purchase schedule.

1.10 To Whom Do I Make Payments for Awarded Conservation Helium Volumes?

Make checks payable to the Bureau of Land Management at the address listed in part 1.08 of this Notice.

1.11 What Are the Penalties for Not Paying for the Conservation Helium in a Timely Manner?

If BLM does not receive a payment by the original due date or by the deadline established on a written late notice, the purchaser will forfeit the remainder of its allotment unless the purchaser can show that payment was late through no fault of its own. However, penalty interest will be assessed in accordance with the Debt Collection Act of 1982, 31 U.S.C. 951–953.

1.12 How Will I Know If I Have Been Successful in My Purchase Request?

Successful purchasers will be notified in writing by BLM no later than 2 weeks after the close of this Notice with the awarded volumes and payment schedule.

Allocated Sale

2.01 What Is the Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be set aside for purchase by the Crude Helium Refiners.

2.20 Who Will Be Allowed To Purchase Conservation Helium in the Allocated Sale?

Only those who meet the definition of Crude Helium Refiners as defined in part 1.02 of this Notice.

2.03 What Volume of Conservation Helium Is Available in the Allocated Sale?

The amount available will be 90 percent of the total volume of the Supplemental Conservation Helium Sale − 1,449 MMcf.

2.04 How Will the Conservation Helium Be Apportioned Among the Refiners?

The apportionment to each Crude Helium Refiner will be based on its percentage share (rounded to the nearest 1/10th of 1 percent) of the total refining capacity as of October 1, 2000, connected to the BLM crude helium pipeline.

2.05 What Will Happen if a Refiner or Refiners Request an Amount Other Than Their Share of What Is Offered for Sale?

• If one or more refiners request less than their allocated share, any other refiner(s) that requested more than their share will be allowed to purchase the excess volume based on proportionate shares of remaining refining capacities.

• Requests by the Crude Helium Refines that are in excess of the amount available above will be carried over to the Non-Allocated Sale and considered a separate bid under the Non-Allocated Sale rules.

2.06 What Will Happen If the Total Amount Requested By the Crude Helium Refiners Is Less Than the 1,449 MMcf Offered in the Allocated Sale?

Any excess volume not sold to the Crude Helium Refiners will be added to the Non-Allocated Sale volume.

2.07 Do You Have a Hypothetical Example of How an Allocated Sale Would Be Conducted?

Assume 2,100 MMCcf were available for total sale with 90 percent available for Allocated Sale (1,890 MMcf).

Bidder—allocated sale	Installed refining capacity (percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner A	10	225	189	36	20	36	225	0

Bidder—allocated sale	Installed refining capacity (percent)	Refiner bid volume*	Allocated volume*	Excess volume requested*	Proration percent	Excess allocated*	Total allocated*	Carry over to non-allocated sale*
Refiner B	50	750	750	0	0	0	750	0
Refiner C	40	985	756	229	80	156+3	915	70
Total	100	1,960	1,695	265	100	195	1,890	0

* All volumes in MMcf.

After the initial allocation, Refiner B has received all it requested. However, 265 MMcf is deemed excess of the total in the first iteration of the allocated Sale and reallocated to the two remaining refiners based on the refining capacity between them. With the reallocation, Refiner A gets all requested, but Refiner C is still short by 73 MMcf. Additionally, 3 MMcf remains unallocated and without any other Refiners is awarded to Refiner C, who now has a remaining request of 70 MMcf that is posted into the Non-Allocated Sale. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Non-Allocated Sale

3.01 What Is the Non-Allocated Sale?

That portion of the annual sale volume of Conservation Helium that will be offered to all qualified Bidders.

3.02 What Is the Minimum Volume I Can Request?

The minimum request is 5 MMcf.

3.03 What Volume of Conservation Helium Is Available for the Non-Allocated Sale?

The total volume of Conservation Helium available for this portion of the sale is 161 MMcf plus any additional helium that is not sold as part of the Allocated Sale.

3.04 How Is the Ratio of Allocated to Non-Allocated Sale Volumes Determined?

According to the terms of the HPA, the BLM must conduct the Annual Conservation Helium Sales in a manner not to cause undue helium market disruptions; and therefore, the majority of the Conservation Helium is being offered as part of the Allocated Sale. Currently, *the Crude Helium Refiners have refining capacity roughly double what can be supplied* through the Annual Conservation Helium Sales. Although there are other crude helium supplies available to the Crude Helium Refiners, these supplies are declining each year. The BLM must be sensitive to the Crude Helium Refiners' requirements while maintaining a balance with other helium industry requirements. The exact ratio of Allocated to Non-Allocated Sale volumes may change for subsequent Annual Conservation Helium Sales.

3.05 How will the Non-Allocated Conservation Helium Be Apportioned Among the Bidders?

The Conservation Helium will be apportioned equally in 1 Mcf increments among the Bidders with no prospective Bidder receiving more than its request.

3.06 What Will Happen if the Bidders Request More Than What Is Made Available for Sale in Part 3.03 of This Notice?

- If one or more Bidders request less than their apportioned amount, any other Bidder(s) that requested more than its apportioned amount will be allowed to purchase equally apportioned amounts of the remaining volume available for this sale.
- If all Bidders request more than their apportioned amount each Bidder will receive its apportioned amount as determined in part 3.05 in this Notice.

3.07 What Will Happen If a Bidder Requests Less Than Its Apportioned Amount?

Any Bidder requesting less than the calculated apportioned volume will receive the amount of its request and amounts remaining will be reapportioned in accordance with part 3.05 in this Notice.

3.08 What Will Happen If the Total Requests From All Bidders Are Less Than That Offered for Sale in the Non-Allocated Sale?

If there is any excess amount after the Supplement Sale, then it will not be sold and will be held in storage for future sales.

3.09 Do You Have a Hypothetical Example of How a Non-Allocated Sale Would Be Conducted?

Assume, 2,100 MMcf were available for total sale with 10 percent available for Non-Allocated Sale (210 MMcf).

Bidder—non-allocated sale	Bid volume	Apportioned volume*	Excess volume requested*	Proration percent	Excess apportioned*	Total apportioned*	Amount requested not received*
Refiner C	70	52.5	17.5	50	15	67.5	2.5
Company D	100	52.5	47.5	50	15	67.5	32.5
Company E	50	50	0	0	0	50	0
Company F	25	25	0	0	0	25	0
Total	245	180	65	100	30	210	35

*All volumes in MMcf.

In this example, three companies submit a request and there is a carryover amount from one of the Crude Helium Refiners in the Allocated Sale that is considered as a separate request. Each Bidder would be apportioned 52.5

MMcf, (i.e., 210 MMcf of Non-Allocated Conservation Helium ÷ 4 Bidders = 52.5 MMcf per Bidder).

After the initial allocation, Companies E and F have received all the helium they requested. However, 30 MMcf is deemed excess in the first iteration of the Non-Allocated Sale and reallocated to the two remaining Bidders. With the reallocation, Refiner C and Company D each receives an additional 15 MMcf. No more helium is available, Refiner C and Company D do not receive all that they requested, and the sale is complete. All percentages used in the calculation will be rounded to the nearest 1/10th of 1 percent. All volumes calculated will be rounded to the nearest 1 Mcf.

Dated: January 27, 2005.

Jesse J. Juen,

Acting State Director, New Mexico.

[FR Doc. 05–6978 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–A6–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1120–PH]

Notice of May Resource Advisory Council Meeting to be Held in Twin Falls District, ID

AGENCY: Bureau of Land Management, Twin Falls District.

SUMMARY: This notice announces the intent to hold a Bureau of Land Management Resource Advisory Council (RAC) meeting in the Twin Falls District of Idaho on Tuesday, May 17, 2005. The meeting will be held in the Oak Room at the Red Lion Canyon Springs Hotel, 1357 Blue Lakes Boulevard, in Twin Falls, Idaho at 8 a.m.

SUPPLEMENTARY INFORMATION: The Twin Falls District Resource Advisory Council consists of the standard fifteen members residing throughout south central Idaho. The May meeting will be the group's third quarterly meeting. Agenda items will include relocation of the Sun Valley Airport, status of the proposed Cotterell Mountain Wind Energy Project, Grazing Regulation Status, a presentation of the new Idaho BLM Off-Highway Vehicle campaign, and an update on the Jim Sage Vegetation Treatment Project, among other smaller updates.

FOR FURTHER INFORMATION CONTACT: Sky Buffat, Twin Falls District, Idaho, 378 Falls Avenue, Twin Falls, Idaho, 83301, (208) 732–7307.

Dated: April 1, 2005.

Howard Hedrick,

Twin Falls District Manager.

[FR Doc. 05–7011 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

[MT–920–04–1310–FI–P; (NDM 75388]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 75388

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), the lessee timely filed a petition for reinstatement of oil and gas Lease NDM 75388, Billings County, North Dakota. The lessee paid the required rental accruing from the date of termination.

No Leases were issued that affect these lands. The lessee agrees to new Lease terms for rentals and royalties of $5 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the Lease and $155 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the Lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the Lease, effective the date of termination subject to:

- The original terms and conditions of the Lease;
- The increased rental of $5 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $155 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, PO Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: February 23, 2005.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 05–6976 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01: WYW153236]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW153236 for lands in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has (lessees have) paid the required $500 administrative fee and $166 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW153236 effective June 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–6979 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW155759]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas Lease WYW155759 for lands in Sheridan County, Wyoming. The petition was filed on time and was

accompanied by all the rentals due since the date the Lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended Lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the Lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate Lease WYW155759 effective December 1, 2004, under the original terms and conditions of the Lease and the increased rental and royalty rates cited above. BLM has not issued a valid Lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 05–6980 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–2640–BH; AZA 31887]

Public Land Order No. 7629; Withdrawal of Public Land for the Hillside Mine Reclamation Project; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 352.55 acres of public land from location and entry under the United States mining laws for a period of 5 years to protect the Hillside Mine Reclamation Project while the Bureau of Land Management completes land use planning for the area.

DATES: Effective Date: April 8, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Misiaszek, BLM Kingman Field Office, 2755 Mission Boulevard Avenue, Kingman, Arizona 86401, 928–718–3740.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), to protect the Bureau of Land Management's Hillside Mine Reclamation Project:

Gila and Salt River Meridian

T. 15 N., R. 9 W.,
sec. 16, lots 1 to 5, inclusive, SW¼NE¼, SE¼NW¼, NW¼SW¼, and E½SE¼.

The area described contains 352.55 acres in Yavapai County.

2. This withdrawal will expire 5 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: March 18, 2005.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 05–6975 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–032–05–1430–FR]

Notice of Realty Action; Recreation and Public Purposes Act Classification for Conveyance; Door County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Public land near the community of Baileys Harbor, in Door County, Wisconsin, has been examined by the Bureau of Land Management (BLM) and found suitable for classification for conveyance to Door County under the provisions of the Recreation and Public Purposes Act of 1926, as amended (R&PP Act). The County proposes to acquire and manage the realty as an historic site.

ADDRESSES: BLM-Eastern States, Milwaukee Field Office, 626 E. Wisconsin Avenue, Suite 200, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, Realty Specialist, at (414) 297–4402 or the address listed above.

SUPPLEMENTARY INFORMATION: The following described public land, reserved under the jurisdiction of the United States Coast Guard, U.S. Department of Homeland Security, located near Baileys Harbor, Wisconsin, and known as Cana Island Lightstation, is hereby classified as suitable for conveyance under the provisions of the R&PP Act (43 U.S.C. 869 *et seq.*):

Fourth Principal Meridian

T. 30 N., R. 28 E.,
Section 11, Tract 37

The area described contains 9.06 acres, more or less, in Door County.

Door County has applied for patent to the public land under the R&PP Act. The United States Coast Guard expressly concurs with this disposition of the land. The County proposes to protect and manage the lighthouse, the lighthouse related structures and the surrounding acreage as an historic site open to the public under regulated access. The subject land is identified in the Wisconsin Resource Management Plan Amendment, approved March 2, 2001, as not needed for federal purposes and as having potential for disposal to protect the historic structures and surrounding land. Conveyance of the land for recreational and public purpose use would be in the public interest.

The patent, when issued, will be subject to the following terms, covenants, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.

2. Valid existing rights.

3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals under applicable laws and regulations established by the Secretary of the Interior.

4. Terms, covenants and conditions identified through the site-specific environmental analysis.

5. Any other rights or reservations that the authorized officer deems appropriate to ensure unimpeded and unobstructed operation of the navigation light beacon, public access and the proper use and management of the realty and any interest therein.

Detailed information concerning the foregoing is available for review at the office of the Bureau of Land Management listed above.

Commencing on April 8, 2005, the above described land will be segregated from all forms of appropriation under the public land laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Classification Comments: Interested parties may submit comments involving

the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for use as an historic site, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, and if the use is consistent with state and federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for management as an historic site.

Interested parties may submit comments regarding the proposed classification or conveyance of the subject land to the Field Manager, at the address listed above, up until May 23, 2005.

Any adverse comments will be evaluated by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on June 7, 2005.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 05–6982 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1220–BZ]

Resource Management Plan Amendment (RMPA) and Environmental Assessment (EA) for Potential Reroute of the Continental Divide National Scenic Trail in Hidalgo and Grant Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The BLM Las Cruces Field Office is initiating the preparation of an RMPA which will include an EA for potential rerouting of the Continental Divide National Scenic Trail in Hidalgo and Grant Counties in southwestern New Mexico. The RMPA will allow for selection of an alternate route for the Trail that will consider reducing mileage of the trail and reducing agency costs and timeframes associated with development of the Continental Divide National Scenic Trail. The public is invited to participate in the scoping process to identify issues and planning criteria to be considered in the development of the RMPA/EA. The BLM will maintain a mailing list of parties and persons interested in being kept informed about the RMPA/EA.

DATES: Comments will be accepted for 30-days following publication of this notice.

ADDRESSES: Comments should be sent to the BLM Las Cruces Field Office, Attn. Mark Hakkila, 1800 Marquess, Las Cruces, New Mexico 88005.

It is our practice to make Public comments, including names and street addressees of respondents, available for public review at the LCFO during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EA document. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Mark Hakkila, Team Leader at (505) 525–4341 or by e-mail at *mhakkila@nm.blm.gov*.

SUPPLEMENTARY INFORMATION: The BLM selected a 130-mile corridor for the Continental Divide National Scenic Trail through the Mimbres Resource Management Plan (RMP), completed in 1993. The selected route goes from Antelope Wells, New Mexico on the south to the Continental Divide where it enters the Gila National Forest in the Burro Mountains on the north. Since completion of the Mimbres RMP, the Continental Divide Trail Alliance came into being as the main trail user advocacy group. The Alliance proposes to shorten the route so that hikers can start on the International boundary with Mexico north of the Big Hatchet Mountains. Additionally, the Gila National Forest has changed their selected route so that the Trail will exit the Burro Mountains at Engineer Canyon instead of along the Continental Divide. In order to select a route that meets these new criteria, the RMP must be amended. The RMPA/EA will be prepared by an interdisciplinary team of BLM resource specialists including realty, recreation, cultural, minerals, and hazardous materials specialists. Additional technical support will be provided by other specialists as needed.

Dated: January 27, 2005.

Edwin L. Roberson,

Field Manager, Las Cruces.

[FR Doc. 05–6977 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Minerals Management Service Panel Discussion on Published Natural Gas Index Pricing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of panel discussion.

SUMMARY: This notice announces a panel discussion regarding Published Natural Gas Index Pricing—A Panel Discussion on Current Issues. The panel will be held on April 26, 2005, in Houston, Texas. The intent of the panel discussion is to bring together some of the leading experts in gas marketing to provide information that will be helpful in answering the following question:

Do the published natural gas price indices in the United States now have sufficient liquidity, transparency, and accuracy to truly represent the value of natural gas commodities in today's marketplace?

The MMS neither endorses nor opposes possible future use of published natural gas price indices as a basis for natural gas valuation for Federal royalties. This panel is being held in conjunction with the Seventh Annual Industry Awards Program, which honors exceptional mineral revenue reporting, commendable corporate leadership practices, and excellent safety records. Attendance at the panel discussion is free of charge. The cost of the awards program and luncheon is $50, and we encourage you to register and pay online by credit card for the awards program and luncheon. All attendees should register by Friday, April 15, 2005. Information about the event, registration, hotel reservations, and award selection criteria are available at the following Web site: *http://www.mms.gov/awards.*

DATES: Tuesday, April 26, 2005. Panel hours are 8:30 a.m. to 11:15 a.m., central time. The awards program and luncheon is scheduled to begin at 11:30 a.m., central time.

ADDRESSES: InterContinental Houston Hotel, 2222 West Loop-South, Houston, Texas, 77027, telephone (713) 627–7600.

FOR FURTHER INFORMATION CONTACT: Mary Williams, Manager, Federal Onshore Oil and Gas Compliance and Asset Management, Minerals Revenue Management, Minerals Management Service, telephone (303) 231–3403, FAX (303) 231–3744, e-mail to *mary.williams@mms.gov*, PO Box 25165, MS 392B2, Denver, Colorado 80225–0165.

Dated: March 23, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–6985 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Western Planning Area, Oil and Gas Lease Sale 196 (2005) Environmental Assessment

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service is issuing this notice to advise the public that MMS has prepared an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 196 in the Western Gulf of Mexico (GOM) (Lease Sale 196) scheduled for August 2005. Proposed Lease Sale 196 is the fourth Western Planning Area (WPA) lease sale scheduled in the *Outer Continental Shelf Oil and Gas Leasing Program:* 2002–2007 (5-Year Program, OCS EIS/EA MMS 2002–006). The preparation of this EA is an important step in the decisionmaking process for Lease Sale 196. The proposal for Lease Sale 196 (the offering of all available unleased acreage in the WPA) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features and no action) were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II* (Multisale EIS, OCS EIS/EA MMS 2002–052). The Multisale EIS analyzed the effects of a typical WPA lease sale by presenting a set of ranges for resource estimates, projected exploration and development activities, and impact-producing factors for any of the proposed WPA lease sales. The level of activities projected for proposed Lease Sale 196 falls within these ranges. In this EA, which tiers from the Multisale EIS and incorporates that document by reference, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared. No new significant impacts were identified for proposed Lease Sale 196 that were not already assessed in the Multisale EIS. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine Central Planning Area (CPA) and WPA lease sales scheduled in the 5-Year Program. Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional NEPA review (an EA) will be conducted to address any new information relevant to that proposed action. After completion of the EA, MMS will determine whether to prepare a FONNSI or a Supplemental EIS. The MMS will then prepare and send Consistency Determinations (CD's) to the affected States to determine whether the proposed lease sale is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of the proposed lease sale. The tentative schedule for the prelease decision process for Lease Sale 196 is as follows: CD's sent to affected States, March 2005; PNOS sent to governors of the affected States, March 2005; Final Notice of Sale published in the **Federal Register**, July 2005; and Lease Sale 196, August 2005. To obtain single copies of the Multisale EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov.*

Public Comments: Interested parties are requested to send comments on this EA/FONNSI within 30 days of this notice's publication. Comments may be submitted in one of the following three ways:

1. Comments may be submitted using MMS's Public Connect on-line commenting system at *https://ocsconnect.mms.gov.* This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA Lease Sale 196 EA'' or select it from the ''Projects Open for Comment'' menu.

2. Written comments may be enclosed in an envelope labeled ''Comments on WPA Lease Sale 196 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Comments may be sent to the MMS e-mail address: *environment@mms.gov.*

All comments received will be considered in the decisionmaking process for Lease Sale 196.

EA Availability: To obtain a copy of this EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114,

New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view this EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: March 7, 2005.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 05–6984 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010–AB57

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of major portion prices for calendar year 2003.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register**. The regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values for the 12 months of 2003. The due date to pay is May 31, 2005.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3702; FAX (303) 231–3755; e-mail to *John.Barder@mms.gov*; or Shawna Hopkins, Indian Oil and Gas Compliance and Asset Management, MMS; telephone (303) 231–3817; FAX (303) 231–3755; e-mail to *Shawna.Hopkins@mms.gov*. Mailing address: Minerals Management Service, Minerals Revenue Management, ONCAM, Indian Oil and Gas Compliance and Asset Management, P.O. Box 25165, MS 396B2, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii) (2004). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (2004) will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is May 31, 2005.

Gas Major Portion Prices and Due Dates for Designated Areas Not Associated With an Index Zone

MMS-Designated areas	January 2003 (MMBtu)	February 2003 (MMBtu)	March 2003 (MMBtu)
Blackfeet Reservation	5.57	6.48	9.53
Fort Belknap	4.97	5.10	5.84
Fort Berthold	4.32	5.88	6.31
Fort Peck Reservation	3.55	5.25	7.96
Navajo Allotted Leases in the Navajo Reservation	4.37	4.50	5.82
Rocky Boys Reservation	3.75	4.65	6.76
Ute Allotted Leases in the Uintah and Ouray Reservation	2.90	3.21	5.05
Ute Tribal Leases in the Uintah and Ouray Reservation	3.20	3.68	6.47

MMS-Designated areas	April 2003 (MMBtu)	May 2003 (MMBtu)	June 2003 (MMBtu)
Blackfeet Reservation	6.63	6.64	7.05
Fort Belknap	5.04	5.08	5.27
Fort Berthold	4.28	4.76	4.83
Fort Peck Reservation	4.43	4.29	4.97
Navajo Allotted Leases in the Navajo Reservation	3.65	4.02	4.88
Rocky Boys Reservation	4.04	4.16	4.57
Ute Allotted Leases in the Uintah and Ouray Reservation	3.19	4.04	4.42
Ute Tribal Leases in the Uintah and Ouray Reservation	3.51	4.39	4.83

MMS-Designated areas	July 2003 (MMBtu)	August 2003 (MMBtu)	September 2003 (MMBtu)
Blackfeet Reservation	7.09	5.73	6.14
Fort Belknap	5.18	5.03	5.13
Fort Berthold	4.22	4.25	3.93
Fort Peck Reservation	4.69	4.71	4.47
Navajo Allotted Leases in the Navajo Reservation	4.66	3.87	4.31
Rocky Boys Reservation	4.04	3.62	3.76
Ute Allotted Leases in the Uintah and Ouray Reservation	4.60	4.11	4.24
Ute Tribal Leases in the Uintah and Ouray Reservation	4.24	3.94	4.05

MMS-Designated areas	October 2003 (MMBtu)	November 2003 (MMBtu)	December 2003 (MMBtu)
Blackfeet Reservation	5.83	5.64	5.88
Fort Belknap	5.06	5.03	5.32
Fort Berthold	4.10	4.05	5.03
Fort Peck Reservation	4.10	4.15	4.90
Navajo Allotted Leases in the Navajo Reservation	3.88	3.79	4.23
Rocky Boys Reservation	3.44	3.38	3.94
Ute Allotted Leases in the Uintah and Ouray Reservation	4.11	3.77	4.10
Ute Tribal Leases in the Uintah and Ouray Reservation	3.84	3.63	4.24

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the MMS Web site address at *http://www.mrm.mms.gov/ReportingServices/PDFDocs/991201.pdf.*

Dated: March 3, 2005.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 05–7019 Filed 4–7–05; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–013]

Sunshine Act Meeting Notice; Change in Meeting Date for Investigations and Scheduling

Agency Holding the Meeting: United States International Trade Commission.

Original Time and Date: April 13, 2005 at 11 a.m.

New Time and Date: April 19, 2005 at 9:30 a.m.

Place: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters To Be Considered:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–439 and 731–TA–1077, 1078, and 1080 (Final)(Polyethylene Terephthalate (PET) Resin from India, Indonesia, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 3, 2005.)
5. Outstanding action jackets: None.

In accordance with 19 CFR 201.35 (d)(2), the Commission hereby announces a change of the date for the Commission vote in the above referenced investigations and schedules said meeting. In accordance with Commission policy, subject matter listed above not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7167 Filed 4–6–05; 11:36 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–05–014]

Sunshine Act Meeting

ACTION: Cancellation of Government in the Sunshine Meeting.

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL TIME AND DATE: April 13, 2005 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

In accordance with 19 CFR 201.35(d)(1), the Commission has determined to cancel the Government in the Sunshine meeting which was scheduled for April 13, 2005. The Commission will reschedule this meeting at a future date. Earlier announcement of this cancellation was not possible.

Issued: April 5, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–7168 Filed 4–6–05; 11:36 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights; Certification of the North Carolina Accessibility Code Under the Americans With Disabilities Act; Hearing

AGENCY: Department of Justice.

ACTION: Notice of hearing.

SUMMARY: The Department of Justice will hold an informal hearing in Washington, DC on the proposed certification that the 2002 North Carolina Accessibility Code with 2004 amendments (NCAC) meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

DATES: The hearing in Washington, DC is scheduled for Monday, June 20, 2005, at 1 p.m. eastern time.

ADDRESSES: The hearing will be held at: Disability Rights Section, 1425 New York Avenue, NW., Suite 4039, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., 1425 NYA Building, Washington, DC 20530. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TTY).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: On April 8, 2005, the Department of Justice (Department) published a notice in the **Federal Register** announcing that it had preliminarily determined that the 2002 North Carolina Accessibility code with 2004 amendments (NCAC) meets or exceeds the new construction and alternations requirements of title III of the ADA. The Department also noted that it intended to issue final certification of the NCAC, and requested written comments on the preliminary determination and the proposed final certification. Finally, the Department noted that it intended to hold an informal hearing in Cary, North Carolina.

In addition to the informal hearing in Cary, North Carolina, the Department will hold an informal hearing in Washington, DC to provide another opportunity for interested persons, including individuals with disabilities,

to express their views with respect to the preliminary determination of equivalency of the NCAC. Interested parties who wish to testify at the hearing should contact Linda Garrett at (202) 353–0423 TTY, or by e-mail at *Linda.Garrett@usdoj.gov.*

The meeting site will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Linda Garrett at (202) 353–0423 TTY, or by e-mail at *Linda.Garrett@usdoj.gov.*

Dated: March 31, 2005.

R. Alexander Acosta,

Assistant Attorney General for Civil Rights.

[FR Doc. 05–7033 Filed 4–7–05; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of the Assistant Attorney General for Civil Rights; Certification of the North Carolina Accessibility Code Under the Americans With Disabilities Act; Informal Hearing

AGENCY: Department of Justice.

ACTION: Notice of preliminary determination of equivalency and opportunity to submit written comments, and hearing on proposed determination.

SUMMARY: The Department of Justice (Department) has determined that the 2002 North Carolina Accessibility Code with 2004 amendments (NCAC) meets or exceeds the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA). The Department proposes to issue a final certification, pursuant to 42 U.S.C. 12188(b)(1)(A)(ii) and 28 CFR 36.601 *et seq.*, which would constitute rebuttable evidence, in any enforcement proceeding, that a building constructed or altered in accordance with the NCAC meets or exceeds the requirements of the ADA. The Department will hold an informal hearing on the proposed certification in Cary, North Carolina.

DATES: To be assured of consideration, comments must be in writing and must be received on or before June 7, 2005. The hearing in Cary, North Carolina is scheduled for Monday, May 16, 2005, at 1 p.m. eastern time.

ADDRESSES: Comments on the preliminary determination of equivalency and on the proposal to issue final certification of equivalency of the NCAC should be sent to: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., 1425 NYA Building, Washington, DC 20530.

The hearing will be held at: Bond Park Community Center, 150 Metro Park Drive, Cary, NC 27512.

FOR FURTHER INFORMATION CONTACT: John L. Wodatch, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Avenue, NW., 1425 NYA Building, Washington, DC 20530. Telephone number (800) 514–0301 (Voice) or (800) 514–0383 (TTY).

Copies of this notice are available in formats accessible to individuals with vision impairments and may be obtained by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY). Copies of the NCAC and supporting materials may be inspected by appointment at 1425 New York Avnue, NW., Suite 4039, Washington, DC by calling Linda Garrett at (202) 353–0423 TTY, or by e-mail at *Linda.Garrett@usdoj.gov*.

SUPPLEMENTARY INFORMATION:

Background

The ADA authorizes the Department of Justice, upon application by a State or local government, to certify that a State or local law that establishes accessibility requirements meets or exceeds the minimum requirements of title III of the ADA for new construction and alterations. 42 U.S.C. 12188(b)(1)(A)(ii); 28 CFR 36.601 *et seq.* Final certification constitutes rebuttable evidence, in any ADA enforcement action, that a building constructed or altered in accordance with the certified code complies with the new construction and alterations requirements of title III of the ADA.

The North Carolina Department of Insurance requested that the Department of Justice (Department) certify that the 200w North Carolina Accessibility Code with 2004 amendments (NCAC) meets or exceeds the new construction and alterations requirements of title III of the ADA.

The Department has analyzed the NCAC and has preliminarily determined that it meets or exceeds the new construction and alterations requirements of title III of the ADA. By letter dated March 17, 2005, the Department notified the North Carolina Department of Insurance of the Department's preliminary determination of equivalency.

Effect of Certification

The certification determination will be limited to the version of the NCAC that has been submitted to the Department. The certification will not apply to amendments or interpretations that have not been submitted and reviewed by the Department.

Certification will not apply to buildings constructed by or for State or local governmental entities, which are subject to title II of the ADA. Nor does certification apply to accessibility requirements that are addressed by the NCAC, but are not addressed by the new construction alterations requirements of title III of the ADA, including the ADA Standards for Accessible Design.

Certification also will not apply to variances or waivers granted under the NCAC. Therefore, if a builder receives a variance, waiver, modification, or other exemption from the requirements of the NCAC for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element. Similarly, certification will not apply if other North Carolina building codes provide an exemption from the ADA required minimum accessibility requirements.

Procedure

The Department will hold an informal hearing in North Carolina during the 60-day comment period to provide an opportunity for interested persons, including individuals with disabilities, to express their views with respect to the preliminary determination of equivalency for the North Carolina law. Interested parties who wish to testify at the hearing should contact Linda Garrett at (202) 353+–0423 TTY or by e-mail at *Linda.Garrett@usdoj.gov.*

The hearing site will be accessible to individuals with disabilities. Individuals who require sign language interpreters or other auxiliary aids should contact Linda Garrett at (202) 353–0423 TTY, or by e-mail at *Linda.Garrett@usdoj.gov.*

Dated: March 31, 2005.

R. Alexander Acosta,

Assistant Attorney General for Civil Rights.

[FR Doc. 05–7034 Filed 4–7–05; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study

of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT20030001 (Jun. 13, 2003)
CT20030003 (Jun. 13, 2003)
CT20030004 (Jun. 13, 2003)
CT20030005 (Jun. 13, 2003)
New Jersey
NJ20030008 (Jun. 13, 2003)

Volume II

Delaware
DE20030002 (Jun. 13, 2003)
DE20030009 (Jun. 13, 2003)
Virginia
VA20030006 (Jun. 13, 2003)
VA20030011 (Jun. 13, 2003)
VA20030018 (Jun. 13, 2003)

Volume III

Alabama
AL20030008 (Jun. 13, 2003)
Florida
FL20030001 (Jun. 13, 2003)
FL20030011 (Jun. 13, 2003)
FL20030017 (Jun. 13, 2003)
FL20030032 (Jun. 13, 2003)
Mississippi
MS20030003 (Jun. 13, 2003)
MS20030050 (Jun. 13, 2003)
MS20030055 (Jun. 13, 2003)
MS20030056 (Jun. 13, 2003)

Volume IV

Michigan
MI20030007 (Jun. 13, 2003)

Volume V

Arkansas
AR20030001 (Jun. 13, 2003)
AR20030023 (Jun. 13, 2003)
AR20030027 (Jun. 13, 2003)
Iowa
IA20030008 (Jun. 13, 2003)
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Louisiana
LA20030002 (Jun. 13, 2003)
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TX20030038 (Jun. 13, 2003)
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Volume VI

Montana

MT20030001 (Jun. 13, 2003)
MT20030007 (Jun. 13, 2003)
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CA20030019 (Jun. 13, 2003)
CA20030023 (Jun. 13, 2003)
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CA20030031 (Jun. 13, 2003)
CA20030032 (Jun. 13, 2003)
CA20030033 (Jun. 13, 2003)
CA20030035 (Jun. 13, 2003)
CA20030036 (Jun. 13, 2003)
CA20030037 (Jun. 13, 2003)

General Wage determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http.//www.access.gpo.gov/davisbacon.* they are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed in Washington, DC, this 31 day of March, 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–6727 Filed 4–07–05; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors

TIME AND DATE: The Legal Services Corporation Board of Directors will meet by telephone on April 13, 2005 at 4:15 p.m. (e.d.t.).

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC.

STATUS OF MEETINGS: Closed. A portion of this telephonic meeting of the Board of Directors may be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the Legal Services Corporation's corresponding regulation 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

3. Consider and act on the Corporation's appeal of the District Court's Decision in the matter of *Velazquez/Dobbins* v. *LSC.*
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: April 6, 2005.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 05–7262 Filed 4–6–05; 2:15 pm]

BILLING CODE 7050–01–P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

Notice of Federal Advisory Committee Meeting

Authority: 5 U.S.C. Appendix; 20 U.S.C. 5601–5609.

AGENCY: U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

ACTION: Notice of meeting.

SUMMARY: The National Environmental Conflict Resolution (ECR) Advisory Committee, of the U.S. Institute for Environmental Conflict Resolution, will be meeting by teleconference on Wednesday, April 27, 2005. The call will occur from 2 p.m. to approximately 4 p.m. eastern daylight time. Members of the public may participate in the call by dialing 1–800–930–9002 and entering a passcode: 8072291.

During this teleconference, the Committee will discuss: the Committee's final report of recommendations and strategy for distribution and next steps for a future Committee. The final report by the Committee can be viewed at *http://www.ecr.gov/necrac/reports.htm.*

Members of the public may make oral comments during the teleconference or may submit written comments. In general, each individual or group making an oral presentation will be limited to five minutes, and total oral comment time will be limited to one-half hour at the end of the call.

Written comments may be submitted by mail or by e-mail to *gargus@ecr.gov.* Written comments received in the U.S. Institute office far enough in advance of a meeting may be provided to the Committee prior to the meeting; comments received too near the meeting date to allow for distribution will normally be provided to the Committee at the meeting. Comments submitted during or after the meeting will be accepted but may not be provided to the Committee until after that meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who desires further information concerning the

teleconference or wishes to submit oral or written comments should contact Tina Gargus, Special Projects Coordinator, U.S. Institute for Environmental Conflict Resolution, 130 S. Scott Avenue, Tucson, AZ 85701; phone (520) 670–5299, fax (520) 670–5530, or e-mail at *gargus@ecr.gov.* Requests to make oral comments must be in writing (or by e-mail) to Ms. Gargus and be received no later than 5 p.m. mountain standard time on Wednesday, April 20, 2005. Copies of the draft meeting agenda may be obtained from Ms. Gargus at the address, phone and e-mail address listed above.

Dated: April 4, 2005.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 05–6997 Filed 4–7–05; 8:45 am]

BILLING CODE 6820–FN–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Notice of Enforcement Discretion (NOEDs) for Operating Power Reactors and Gaseous Diffusion Plants (GDP).

2. *Current OMB approval number:* 3150–0136.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

5. *The number of annual respondents:* 11.

6. *The number of hours needed annually to complete the requirement or request:* 1,991 hours (1810 reporting [121 hours per response] and 181 recordkeeping [16.45 hours per recordkeeper]).

7. *Abstract:* The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. A specific type of enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or shutdown, or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required. A licensee or certificate holder seeking the issuance of an NOED must provide a written justification, in accordance with guidance provided in NRC Inspection Manual, Part 9900, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Submit, by June 7, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 4th day of April 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–1616 Filed 4–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

The proposed amendment would delete requirements from the Technical Specifications (TS) to submit monthly operating reports and annual occupational radiation exposure reports. The changes are consistent with Revision 1 of NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–369, ''Removal of Monthly Operating and Occupational Radiation Exposure Report.'' The availability of this TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 21, 2004, as supplemented by letter dated January 4, 2005.

The licensee requested approval of the license amendment in an application dated October 21, 2004, as

supplemented January 4, 2005, and requested approval by April 29, 2005. The application constituted a timely submittal for an amendment. However, due to an administrative oversight and to meet the licensee's requested date, a 14-day public comment period will be provided in accordance with the provisions of Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR). That regulation states that where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a Federal Register notice (FRN) allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it may issue an FRN providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment.

Section 50.90(a)(6)(vi) of 10 CFR provides that the Commission will require the licensee to explain the exigency and why the licensee was unable to avoid it. Here, as noted above, the exigency was created by an administrative oversight of the NRC staff and could not have been avoided by the licensee.

This TS improvement is consistent with the NRC TSTF process. The NRC staff interacted extensively with licensees, industry organizations, and other stakeholders during the development of this TSTF as demonstrated in the FRN published on September 25, 2003, and June 23, 2004. The licensee stated that its application does not contain any variations or deviations from the TS changes described in TSTF–369, Revision 1, or in the model safety evaluation dated June 16, 2004. Therefore, the NRC staff has determined that the interaction conducted during the development of this TSTF constituted an extensive opportunity for public comments and, consequently, the 14-day prior comment period is adequate for the issuance of this proposed TS amendment, in accordance with the exigent provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North,

Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 21, 2004, as supplemented by letter dated January 4, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of April 2005.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1620 Filed 4–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of amendments to Facility Operating License No. NPF–39 and NPF–85, issued to Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania.

The proposed amendments would delete requirements from the Technical Specifications (TS) to submit monthly operating reports and annual occupational radiation exposure reports.

The changes are consistent with Revision 1 of NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–369, ''Removal of Monthly Operating and Occupational Radiation Exposure Report.'' The availability of this TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 21, 2004, as supplemented by letter dated January 4, 2005.

The licensee requested approval of the license amendment in an application dated October 21, 2004, as supplemented January 4, 2005, and requested approval by April 29, 2005. The application constituted a timely submittal for an amendment. However, due to an administrative oversight and to meet the licensee's requested date, a 14-day public comment period will be provided in accordance with the provisions of Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR). That regulation states that where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice (FRN) allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it may issue an FRN providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment.

Section 50.90(a)(6)(vi) of 10 CFR provides that the Commission will require the licensee to explain the exigency and why the licensee was unable to avoid it. Here, as noted above, the exigency was created by an administrative oversight of the NRC staff and could not have been avoided by the licensee.

This TS improvement is consistent with the NRC TSTF process. The NRC staff interacted extensively with licensees, industry organizations, and other stakeholders during the development of this TSTF as demonstrated in the FRN published on September 25, 2003, and June 23, 2004. The licensee stated that its application does not contain any variations or deviations from the TS changes described in TSTF–369, Revision 1, or in the model safety evaluation dated June 16, 2004. Therefore, the NRC staff has determined that the interaction conducted during the development of this TSTF constituted an extensive opportunity for public comments and, consequently, the 14-day prior comment period is adequate for the issuance of this proposed TS amendment, in accordance with the exigent provisions of 10 CFR 50.91(a)(6).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the

NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 21, 2004, as supplemented by letter dated January 4, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of April 2005.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1618 Filed 4–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455, STN 50–456 and STN 50–457, 50–010, 50–237 and 50–249, 50–373 and 50–374, 50–254 and 50–265, 50–295 and 50–304

Exelon Generation Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–72, NPF–77, NPF–37, NPF–66, DPR–2, DPR–19, DPR–25, NPF–11, NPF–18, DPR–29, DPR–30, DPR–39, and DPR–48, issued to Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Dresden Nuclear Power Station, Units 1, 2 and 3, Grundy County, Illinois; LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois; and Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois.

The proposed amendment would delete requirements from the Technical Specifications (TSs) to submit monthly operating reports and annual occupational radiation exposure reports. The changes are consistent with Revision 1 of Nuclear Regulatory Commission (NRC) approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–369, ''Removal of Monthly Operating and Occupational Radiation Exposure Report.'' The availability of this TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated October 21, 2004, as supplemented by letter dated January 4, 2005.

The licensee requested approval of the license amendment in an application dated October 21, 2004, as supplemented January 4, 2005, and requested approval by April 29, 2005. The application constituted a timely submittal for an amendment. However, due to an administrative oversight and to meet the licensee's requested date, a 14-day public comment period will be provided in accordance with the provisions of Section 50.91(a)(6) of Title 10 of the Code of Federal Regulations (10 CFR). That regulation states that where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice (FRN) allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it may issue an FRN providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment.

Section 50.90(a)(6)(vi) of 10 CFR provides that the Commission will require the licensee to explain the exigency and why the licensee was unable to avoid it. Here, as noted above, the exigency was created by an administrative oversight of the NRC staff and could not have been avoided by the licensee.

This TS improvement is consistent with the NRC TSTF process. The NRC staff interacted extensively with licensees, industry organizations, and other stakeholders during the development of this TSTF as demonstrated in the FRN published on September 25, 2003, and June 23, 2004. The licensee stated that its application does not contain any variations or deviations from the TS changes described in TSTF–369, Revision 1, or in the model safety evaluation dated June 16, 2004. Therefore, the NRC staff has determined that the interaction conducted during the development of this TSTF constituted an extensive opportunity for public comments and, consequently, the 14-day prior comment period is adequate for the issuance of this proposed TS amendment, in accordance with the exigent provisions of 10 CFR 50.91(a)(6). Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and

petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 21, 2004, as supplemented by letter dated January 4, 2005, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of April 2005.

For the Nuclear Regulatory Commission.

Stephen P. Sands,

Project Manager, Section 2 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1619 Filed 4–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–007]

Exelon Generation Company, LLC; Notice of Change in Location for Public Meeting the Draft Environmental Impact Statement for an Early Site Permit (ESP at the Exelon ESP Site

On March 10, 2005, the U.S. Nuclear Regulatory Commission (NRC, the Commission) issued a notice of availability of NUREG–1815, ''Environmental Impact Statement for an Early Site Permit (ESP) at the Exelon ESP Site: Draft Report for Comment,'' (70 FR 12022). In addition, the notice announced that the NRC staff will hold a public meeting on April 19, 2005 to present an overview of the draft environmental impact statement (DEIS) and to accept public comments on the document. Notice is hereby given that the public meeting will be held at a different location than that specified in the previous notice because of the potential number of attendees. The public meeting will be held at the Clinton Junior High School, 401 N. Center Street, Clinton, Illinois, 61727, on Tuesday, April 19, 2005. The meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the DEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour before the start of the meeting at the high school. No formal comments on the DEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may register to attend or present oral comments at the meeting by contacting Ms. Harriet Nash, by telephone at 1–800–368–5642, extension 4100, or by Internet to the NRC at *ClintonEIS@nrc.gov* no later than April 13, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Ms. Nash will need to be contacted no later than April 13, 2005, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Harriet Nash, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Ms. Nash may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 31 day of March, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–1617 Filed 4–7–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Office of E-Government and Information Technology: Notice of Draft Agency Implementation Guidance for Homeland Security Presidential Directive 12

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: The Office of Management and Budget requests comments on the draft department and agency implementation guidance on Homeland Security Presidential Directive 12(HSPD–12). The guidance is posted at *http://www.whitehouse.gov/omb/inforeg/infopoltech.html.*

DATES: To ensure consideration of comments, comments must be in writing and received by OMB no later than May 9, 2005.

ADDRESSES: Comments on this Notice should be addressed to Jeanette Thornton, Office of E-Government and Information Technology. You are encouraged to submit these comments by e-mail to *eauth@omb.eop.gov.* You may submit via facsimile to (202) 395–5167. Comments can be mailed to the attention of Ms. Michele Courtney, General Services Administration Office of Identity Policy and Practices Division (MEI), 1800 F Street, NW., Room 2014 Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Thornton, Office of Information Technology and E-Government, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–3562, e-mail to *eauth@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: On August 27, 2004 the President signed HSPD-12, Policy for a Common Identification Standard for Federal Employees and Contractors. The Secretary of Commerce was asked to issue, by February 27, 2005, a Government-wide standard for secure and reliable forms of identification to be issued by the Federal Government to its employees and contractors. This standard (Federal

Information Processing Standard (FIPS) 201: Personal Identity Verification for Federal Employees and Contractors) was issued on February 25, 2005 and can be found at: *http://www.csrc.nist.gov/piv-project/*.

The Director of the Office of Management and Budget was asked to ensure agency compliance with this Directive. This agency implementation guidance provides specific instructions to agency heads on how to implement the Directive and the Department of Commerce Standard (FIPS 201). To better inform your comments, first read FIPS 201.

On January 19, 2005 the General Services Administration, in partnership with the Department of Commerce and the Office of Management and Budget, held a public meeting to address the privacy and security concerns as they may affect individuals, including Federal employees and contractors as well as the public at large, in implementation. This meeting informed this implementation guidance.

Karen S. Evans,

Administrator for E-Government and Information Technology.

[FR Doc. 05–6959 Filed 4–7–05; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title*: Medical Reports.

(2) *Form(s) submitted*: G–3EMP, G–197, G–250, G–250a, G–260, RL–11b, RL–11d and RL–250.

(3) *OMB Number*: 3220–0038.

(4) *Expiration date of current OMB clearance*: November 30, 2005.

(5) *Type of request*: Revision of a currently approved collection.

(6) *Respondents*: Businesses or other for-profit, Non-profit institutions, State, Local or Tribal Government.

(7) *Estimated annual number of respondents*: 35,900.

(8) *Total annual responses*: 35,900.

(9) *Total annual reporting hours*: 10,001.

(10) *Collection description*: The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular occupation (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–7035 Filed 4–7–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [70 FR 17270, April 5, 2005].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, April 6, 2005 at 10 a.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the open meeting scheduled for Wednesday, April 6, 2005 as part of consideration of whether to adopt Regulation NMS:

In addition, the Commission will consider whether to adopt a technical amendment jointly with the Commodity Futures Trading Commission to make conforming changes in the language of Rule 3a55–1 under the Exchange Act.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: April 5, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–7186 Filed 4–6–05; 11:57 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51472; File No. SR–CBOE–2005–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Incorporated Relating to the Appointment of the Chairman and Members of CBOE's Regulatory Oversight Committee

April 4, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 17, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated the proposed rule change, as amended, as ''non-controversial'' under Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 2.1 pertaining to the appointment of the members and the chairman of CBOE's Regulatory Oversight Committee. Below is the text of the proposed rule change, as amended. Proposed new language is in *italics*.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised Section III of Exhibit 1 to the proposal to set forth expressly the requirements contained in Rule 19b–4(f)(6) under the Act for the designation of the proposed rule change as ''non-controversial.''

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

Chicago Board Options Exchange, Incorporated

Rules

* * * * *

CHAPTER II—ORGANIZATION AND ADMINISTRATION

PART–A—COMMITTEES

Committees of the Exchange

Rule 2.1. Committees of the Exchange

Rule 2.1(a) *Establishment of Committees.* In addition to committees specifically provided for in the Constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, appropriate Floor Procedure Committees, Floor Officials, appropriate Market Performance Committees, Membership, Product Development and such other committees as may be established in accordance with the Constitution. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board, with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the first regular meeting of the Board of Directors of the next calendar year and until their successors are appointed or their earlier death, resignation or removal. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. Except as may be otherwise provided in the Constitution or the Rules, the Vice Chairman of the Board may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Vice Chairman of the Board for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint Directors to serve on the Governance Committee *and the Regulatory Oversight Committee,* whose members shall not be subject to removal except by the Board. The Chairman of the Governance Committee *and the Chairman of the Regulatory Oversight Committee* shall be appointed by the Chairman of the Board. Whenever the Vice Chairman of the Board is, or has reason to believe he may become, a party to any proceeding of an Exchange committee, he shall not exercise his power to appoint or remove members of that committee, and the Chairman of the Board shall have such power.

(b)–(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change, as amended, is to amend CBOE Rule 2.1 to provide that the Chairman of the Board shall have the authority to appoint the directors who will serve on CBOE's Regulatory Oversight Committee, and also to appoint the chairman of the Regulatory Oversight Committee.[6] The Regulatory Oversight Committee is a standing committee of CBOE's Board of Directors, which generally oversees the independence and integrity of the regulatory functions of the Exchange, and seeks to ensure that the regulatory functions of the Exchange remain free from inappropriate influence. Pursuant to its Board approved charter, the Regulatory Oversight Committee is comprised solely of public directors.

The proposed amendment to CBOE Rule 2.1 granting to the Chairman of the Board the authority to appoint the members and the chairman of the Regulatory Oversight Committee is consistent with other provisions in CBOE's Constitution and rules which grant CBOE's Chairman of the Board the authority to appoint the members and chairman of other committees of the Board of Directors, such as the Audit, Compensation and Governance Committees.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements of Section 6(b) of the Act,[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change, as amended, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

[6] Pursuant to Section 7.1 of CBOE's Constitution, CBOE's Vice Chairman has the authority to appoint the directors to serve on the Regulatory Oversight Committee and the chairman of such committee, except as may be otherwise provided in the Constitution or Rules.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended,

Continued

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–25 and should be submitted on or before April 29, 2005.

under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 17, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–1621 Filed 4–7–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 5041]

Preparation of Fourth U.S. Climate Action Report

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The United States is a Party to the United Nations Framework Convention on Climate Change (UNFCCC). The Convention sets forth requirements for UNFCCC Parties to provide a national communication that lists the steps they are taking to implement the Convention. In particular, Parties are to provide: An inventory of anthropogenic emissions by sources and removal by sinks of all greenhouse gases not controlled by the Montreal Protocol; a detailed description of the policies and measures adopted to implement their commitments under the Convention; and estimates of the effects those policies and measures will have on emissions and sinks. Subsequent guidelines further elaborate the information that Parties are to submit periodically. The United States submitted the first U.S. Climate Action Report (USCAR) to the UNFCCC Secretariat in 1994, the second in 1997, and the third in 2002. The U.S. Government is currently preparing its fourth national communication, which is due to the UNFCCC secretariat no later than January 1, 2006. The purpose of this announcement is to notify interested members of the public of this process and to solicit contributions and input on the issues covered in the national communication for the purpose of preparing the report. The State Department intends to make available for public review a draft national communication in summer of 2005.

DATES: Written comments should be received on or before noon, April 29, 2005.

ADDRESSES: To expedite their receipt, comments should be submitted via e-mail to: *OESCommentsCAR4@state.gov.* Comments may also be submitted in hard copy to Mr. Graham M. Pugh, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Global Change (Room 4330), 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. Graham M. Pugh, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Global Change at (202) 647–4688.

SUPPLEMENTARY INFORMATION:

The Fourth United States Climate Action Report (CAR)

Articles 4.2 and 12 set forth initial requirements for national communications. Subsequently, Parties to the UNFCCC elaborated additional detailed guidelines relating to the content of the national communications. An overview of the reporting requirements is available from the UNFCCC Web site at: *http://unfccc.int/national_reports/annex__i__natcom_/items/1095.php,* while details regarding preparation of the fourth national communication are at: *http://unfccc.int/national_reports/annex_i_national_communications/fourth_national_communications/items/3360.php.*

Guidelines specify chapter headings and the type of information that should be included in the report. Chapters are identified below.

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In keeping with UNFCCC guidelines, the Fourth CAR will provide an inventory of U.S. greenhouse gas emissions and sinks and an estimate of the effects of mitigation policies and measures on future emissions levels. It will describe domestic programs as well as U.S. involvement in international efforts, including technology programs and associated contributions and funding.

In addition, the text will include a discussion of U.S. national circumstances that affect U.S. vulnerability and responses to climate change. Information on the U.S. Climate

[12] 17 CFR 200.30–3(a)(12).

Change Science Program (CCSP) Climate Change Technology Program (CCTP), Global Climate Observing Systems (GCOS), and adaptation programs will also presented.

Public Input Process

This **Federal Register** notice solicits contributions and comments on all matters to be covered in the fourth U.S. CAR and in particular, on issues related to non-federal, State, regional, local, and private sector actions to address climate change. Comments may be submitted to the contact listed above.

In addition, the U.S. will release the draft text of the fourth CAR for review and comment in the summer of 2005. Comments on that document will be due within 30 days of release. Because of the tight time constraints on completing and printing the final text, a longer review period will not be possible.

We invite input now on all aspects of the document currently under development, including its content, format, and graphics. Comments received in response to this **Federal Register** notice will be considered in the preparation of the draft of the fourth national communication.

You may view the 2002 U.S. Climate Action Report on the Internet at: *http://unfccc.int/resource/docs/natc/usnc3.pdf.*

Dated: April 1, 2005.

Daniel A. Reifsnyder,

Office Director, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 05–7044 Filed 4–7–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34680]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant temporary overhead trackage rights to UP over BNSF's line of railroad between BNSF milepost 69.6, near Spokane, WA, and BNSF milepost 1400.0, near Sandpoint, ID, a distance of approximately 70.0 miles.[1]

The transaction is scheduled to be consummated on April 6, 2005, and the temporary trackage rights will expire on or about May 1, 2005. The purpose of the temporary trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34680, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 1, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–6926 Filed 4–7–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The trackage rights involve BNSF segments with non-contiguous mileposts. herefore, total mileage does not correspond to the milepost designations of the endpoints.

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Change in meeting.

SUMMARY: This notice advises all interested persons of a change in the date, time, and location of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting that was to be held on Tuesday, April 12, 2005 (this meeting was previously announced in 70 FR 15990 (March 29, 2005)), will be held on Monday, April 18, 2005, in the Washington, DC area at 12:30 p.m.

ADDRESSES: Due to exceptional circumstances concerning scheduling, this notice is being published at this time. The venue has not been identified to date. Venue information will be posted on the panel's Web site at *http://www.taxreformpanel.gov* as soon as it is available. Seating will be available to the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This is the seventh meeting of the Advisory Panel. The meeting will be focused on understanding the interaction of the Federal tax system with State and local tax systems and how taxes impact business investment.

Comments: Interested parties are invited to attend the meeting. The public is invited to submit comments regarding specific issues of tax reform. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform, 1440 New York Avenue, NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday, except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov.*

Dated: April 6, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–7257 Filed 4–7–05; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–121–90, INTL–292–90, and INTL–361–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations INTL–121–90 (TD 8733), INTL–292–90 (TD 8305), and INTL–361–89 (TD 8292), Treaty-Based Return Positions (§§ 301.6114–1 and 301.7701(b)–7).

DATES: Written comments should be received on or before June 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Treaty-Based Return Positions.

OMB Number: 1545–1126.

Regulation Project Numbers: INTL–121–90, INTL–292–90, and INTL–361–89.

Abstract: Regulation section 301.6114–1 sets forth reporting requirements under Code section 6114 relating to treaty-based return positions. Persons or entities subject to these reporting requirements must make the required disclosure on a statement attached to their return or be subject to a penalty. Regulation section 301.7701(b)–7(a)(4)(iv)(C) sets forth the reporting requirement for dual resident S corporation shareholders who claim treaty benefits as nonresidents of the U.S. Persons subject to this reporting requirement must enter into an agreement with the S corporation to withhold tax pursuant to procedures prescribed by the Commissioner.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 6,020.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 6,015.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 4, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–7098 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–7–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–7–90 (TD 8461), Nuclear Decommissioning Fund Qualification Requirements (§ 1.468A–3).

DATES: Written comments should be received on or before June 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622-6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Nuclear Decommissioning Fund Qualification Requirements.

OMB Number: 1545–1269.

Regulation Project Number: PS–7–90.

Abstract: If a taxpayer requests, in connection with a request for a schedule of ruling amounts, a ruling as to the classification of certain unincorporated organizations, the taxpayer is required to submit a copy of the documents establishing or governing the organization.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2005.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 05–7099 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1040–ES, 1040–ES (NR), and 1040–ES (Espanol)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

DATES: Written comments should be received on or before June 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: 1040–ES, Estimated Tax for Individuals, 1040–ES (NR), U.S. Estimated Tax for Nonresident Alien Individuals, and 1040–ES (Espanol), Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre el Empleo De Empleados Domesticos—Puerto Rico.

OMB Number: 1545–0087.

Form Number: 1040–ES, 1040–ES (NR), and 1040–ES (Espanol).

Abstract: Form 1040–ES is used by U.S citizens and resident aliens to make estimated tax payment of income (and self-employment) tax due in excess of tax withheld. Form 1040–ES (NR) is used by nonresident aliens to pay any income tax due in excess of tax withheld. Form 1040–ES (Espanol) is printed in Spanish for use in Puerto Rico and includes payment vouchers for payment of self-employment tax on a current basis.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 40,991,991.

Estimated Time Per Response: 2 hours, 18 minutes.

Estimated Total Annual Burden Hours: 94,471,282.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 1, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–7100 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12854

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12854, Prior Government Service Information.

DATES: Written comments should be received on or before June 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue

Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Prior Government Service Information.

OMB Number: 1545–1919.

Form Number: Form 12854.

Abstract: Form 12854 is used to record prior government service, annuitant information and to advise on probationary periods.

Current Actions: There are currently no changes to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 24,813.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,203.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–7101 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–119436–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–119436–01 (TD 9171), New Markets Tax Credits.

DATES: Written comments should be received on or before June 7, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* New Markets Tax Credits.

OMB Number: 1545–1765.

Regulation Project Number: REG–119436–01 (Final).

Abstract: These regulations finalize the rules relating to the new markets tax credit under section 45D and replace the temporary regulations which expire on December 23, 2004. A taxpayer making a qualified equity investment in a qualified community development entity that has received a new markets tax credit allocation may claim a 5-percent tax credit with respect to the qualified equity investment on each of the first 3 credit allowance dates and a 6-percent tax credit with respect to the qualified equity investment on each of the remaining 4 credit allowance dates.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,510.

Estimated Time per Respondents: 2 hours 30 minutes.

Estimated Total Annual Burden Hours: 378.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–7103 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Credit for Renewable Electricity Production and Refined Coal Production, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2005

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 2005 as required by section 45(e)(2)(A) (26 U.S.C. 45(e)(2)(A)) and section 45(e)(8)(C) (26 U.S.C. 45(e)(8)(C)).

SUMMARY: The 2005 inflation adjustment factor and reference prices are used in determining the availability of the credit for renewable electricity production and refined coal production under section 45.

DATES: The 2005 inflation adjustment factor and reference prices apply to calendar year 2005 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources, and to 2005 sales of refined coal produced in the United States or a possession thereof.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2005 is 1.2528.

Reference Prices: The reference price for calendar year 2005 for facilities producing electricity from wind is 4.85¢ per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A) (relating to refined coal production) are $31.90 per ton for calendar year 2002 and $36.36 per ton for calendar year 2005. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste have not been determined for calendar year 2005. The IRS is exploring methods of determining those reference prices for calendar year 2006.

Because the 2005 reference price for electricity produced from wind does not exceed 84 multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2005. Because the 2005 reference price of fuel used as feedstock for refined coal does not exceed the $31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2005. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, and municipal solid waste, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2005.

Credit Amount By Qualified Energy Resource and Facility, and Refined Coal: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1), the 84 amount in section 45(b)(1), and the $4.375 amount in section 45(e)(8)(A) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1¢) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2005 under section 45(a) is 1.9¢ per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 0.9¢ per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, and trash combustion facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2005 under section 45(e)(8)(A) is $5.481 per ton on the sale of qualified refined coal.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Ave., NW., Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Heather C. Malloy,

Associate Chief Counsel, (Passthroughs & Special Industries).

[FR Doc. 05–7096 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 5, 2005 from 12 p.m.–1 p.m. et.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or (954) 423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, May 5, 2005, from 12 p.m. to 1 p.m. et via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (954) 423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or (954) 423–7979, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: April 5, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–7102 Filed 4–7–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Platinum Bullion Coin Premium Increase

ACTION: Notification of Platinum Bullion Coin Premium Increase.

SUMMARY: The United States Mint is increasing the premiums for purchases of uncirculated American Eagle Platinum Bullion Coins to its Authorized Purchasers.

Pursuant to the authority that 31 U.S.C. 5112(k) grants to the Secretary of the Treasury to mint and issue platinum coins, the United States Mint mints and issues 1 ounce, ½ ounce, ¼ ounce, and 1/10 ounce platinum coins known as ''American Eagle Platinum Bullion'' coins. The United States Mint sells these coins at a price equal to the daily price of the platinum content of the coin, plus a premium. Effective April 1, 2005, the United States Mint will increase the premiums on uncirculated American Eagle Platinum Bullion coins from 3%, 5%, 7%, and 9% for the 1 ounce, ½ ounce, ¼ ounce, and 1/10 ounce coins, respectively, to 4%, 6%, 10%, and 15% for the 1 ounce, ½ ounce, ¼ ounce, and 1/10 ounce coins, respectively.

FOR FURTHER INFORMATION CONTACT: Gregory Hafner, United States Mint American Eagle Bullion Coin Program Manager; 801 Ninth Street, NW., Washington, DC 20220, or call 202–354–7524.

Authority: 31 U.S.C. 5112.

Dated: April 1, 2005.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 05–7016 Filed 4–7–05; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Friday,
April 8, 2005

Part II

Environmental Protection Agency

40 CFR Parts 9 and 49

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 49

[Docket No: OAR–2004–0067; FRL–7893–8]

RIN 2012–AA01

Federal Implementation Plans Under the Clean Air Act for Indian Reservations in Idaho, Oregon and Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on these Federal Implementation Plans (FIPs) under the Clean Air Act (CAA) for Indian reservations in Idaho, Oregon, and Washington. The FIPs put in place basic air quality regulations to protect health and welfare on Indian reservations located in the Pacific Northwest.

DATES: This regulation is effective June 7, 2005. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 7, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0067. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW., Room B102, Mail Code 6102T, Washington, D.C. 20004 (mailing address is 1200 Pennsylvania Avenue, NW., Mail Code 6102T, Washington, D.C. 20460). The EPA Air and Radiation Docket and Information Center is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The phone number for the Docket's Public Reading Room is (202) 566–1744. The docket is also available for public inspection and copying at the EPA Region 10 office, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101, between 8:30 a.m. and 3:30 p.m. Pacific Time, Monday through Friday, excluding legal holidays. EPA Region 10 requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: David Bray, Office of Air, Waste and Toxics (AWT–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4253, or e-mail address: *bray.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background of the Final Rules

On March 15, 2002, the Environmental Protection Agency (EPA, Agency, or we) proposed to establish Federal Implementation Plans (FIPs) under the Clean Air Act (CAA or Act) (42 U.S.C. 7401 to 7671q) for 39 Indian reservations in Idaho, Oregon, and Washington. 67 FR 11748–11801, March 15, 2002 and 67 FR 51802–51803, August 9, 2002. EPA stated that the proposed rules would be an important step in ensuring that basic air quality protection is in place to protect health and welfare on Indian reservations located in the Pacific Northwest. The proposal was widely publicized, and residents of the reservations, as well as affected Tribes, local governments, and States commented on the proposed rules. During the comment period that ended on October 10, 2002, EPA also held a public hearing in Toppenish, Washington on September 10, 2002. We received 155 written comments during the comment period and 28 people provided oral testimony at the public hearing. Today's **Federal Register** action announces EPA's final action on all of the proposed regulations, except for § 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources. We have not made a final determination on the proposed § 49.136.

In promulgating today's rules, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA to promulgate such implementation plan provisions as are necessary or appropriate to protect air quality within the Indian reservations that are specifically identified in 40 CFR part 49, subpart M Implementation Plans for Tribes—Region X.

After evaluating air quality issues for the Indian reservations in Idaho, Oregon, and Washington, EPA continues to be concerned that there is a gap in air quality requirements in these areas under the CAA. Many Tribes in the Region are in the process of developing air quality management programs under the CAA; however, as of December 2004, no Tribe in Region 10 has submitted Tribal regulations for EPA approval as a Tribal Implementation Plan (TIP). Furthermore, States generally lack the authority to regulate air quality in Indian country. EPA is promulgating these rules today because we have concluded that they are appropriate for protecting air quality on Indian reservations in the Pacific Northwest. The rules will apply to any person who owns or operates an air pollution source within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR part 49, subpart M.

The gap-filling rules EPA proposed in March 2002 were generally based upon the aspects of neighboring State and local rules most relevant to the air polluting activities on reservations in the Pacific Northwest, and follow a level of control of a typical air quality control program. EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. As a general matter, these regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. Included in the docket for the proposed rulemaking were copies of all the State and local rules that EPA considered in this process, as well as a technical support document with summary tables showing the State and local agency levels of control as compared with the proposed regulations and a description of why EPA believed the proposed rules were appropriate.

During the comment period, a number of Tribal governments, the States of Idaho, Oregon, and Washington, and many local air agencies in Washington submitted comments supporting the rules proposed by EPA and offered suggestions for improving the proposed rules. These commenters urged EPA to finalize the rules. Several Tribes also

urged EPA to continue assisting Tribes to build and implement their air quality management programs that will operate in coordination with EPA's rules.

A number of comments were submitted that objected to the proposal generally or to particular provisions, EPA's reasons for proposing the rules, or how the proposal was developed. As discussed in detail below, many commenters objected to the rules because they misunderstood the proposal as authorizing Tribal governments to regulate the activities of nonmembers of the Tribe on privately deeded land within the reservation. Many of those commenters also disagreed with EPA that there is a regulatory gap under the CAA on Indian reservations. The commenters asserted that nonmember reservation residents and their private property within a reservation are under State jurisdiction, and that the proposed rules usurp the rights of State and local air authorities to manage, control, and enforce air quality requirements on non-trust parcels within the exterior boundaries of the reservation. Several comments criticized EPA for failing to follow its own public participation requirements for early involvement prior to publishing the proposed rules. In addition, EPA was criticized for consulting with Tribal governments for a number of years during the development of the proposed rules, but not providing adequate time for local governments to participate.

The proposal to regulate open burning drew many comments. While the commenters generally supported EPA's proposal to regulate open burning, there was a great deal of concern about the proposal to allow the burning of combustible household wastes in burn barrels. A number of commenters also misunderstood the proposal as banning agricultural field burning and wrote about the economic importance of field burning to the agricultural community.

Commenters also wrote that EPA should ensure it has adequate resources, both personnel and financial, to support implementation of the rules. Several Tribes urged EPA to provide sufficient resources for implementation, such as for responding to complaints and taking enforcement actions where there are violations of the rules. As mentioned above, Tribes also want EPA to continue to support capacity building by Tribes for Tribal air programs and to provide adequate resources so the Tribes can assist EPA in administering the rules.

After evaluating all the comments that were received, EPA is moving forward with final rules for the 39 reservations. In these final rules, also referred to as the Federal Air Rules for Indian Reservations in Idaho, Oregon, and Washington (FARR), we are making certain modifications that reflect what EPA has learned from the extensive information provided by commenters and from consultation with the affected Tribal governments. This preamble to the final rules responds to the major issues raised by commenters and describes the final rules and significant changes from the proposal. All other comments are addressed in a document entitled ''Response to Comments'' that can be found in the docket for this rulemaking cited above.

II. Major Issues Raised by Commenters

A. EPA's Authority Under the CAA

Several commenters wrote that the new Federal rules would duplicate State and local government rules, and therefore subject sources to another set of regulations for the same activity. Some commenters wrote that EPA has erroneously determined that the State of Washington does not have authority to administer environmental laws for non-trust lands in the State under an approved program. Other commenters wrote that EPA has not properly determined that the State does not have such jurisdiction as required, in their view, by *State of Michigan* v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001). A State environmental agency disagreed with EPA's position that States generally lack the authority to regulate air quality in Indian country, and cited section 116 of the CAA as specifically preserving State law from preemption with respect to air emission standards. Commenters expressed a variety of other views as to why they believe States, not the Federal government, have jurisdiction for air quality programs in Indian country. One commenter wrote that Congress has given too much power to EPA, and that EPA has exceeded its delegation of responsibility. One citizen stated that the regulatory gap referred to in the proposed rules is a jurisdictional gap created by EPA, and that EPA has redefined a reservation to include all properties, regardless of their ownership. The commenter stated that such a gap does not exist, and that nonmember residents and their private property within a reservation are regulated by applicable State and county authorities in charge of air quality. Some commenters also expressed concern that EPA would extend the Federal regulatory program to include areas in an airshed that lie outside of the reservation boundaries. One commenter also asked EPA to describe how it will determine the reservation status of a source and whether there is a question of the Indian country status of the source.

Several commenters wrote that EPA has exceeded its authority by establishing emission limitations that are not required in order to meet National Ambient Air Quality Standards (NAAQS). These commenters asserted that the CAA authorizes EPA regulations only if needed to meet or attain the NAAQS, and then only at levels justified to achieve health-based measures. These commenters assert that the CAA does not provide authority to regulate sources in an attainment area. An industry commenter also stated that the rules to protect air quality from the potential for significant deterioration caused by particulate matter (such as §§ 49.124, 49.125, 49.126, and 49.128) and rules for protecting air quality from the potential for significant deterioration caused by sulfur dioxide release (§§ 49.129 and 49.130) appear to conflict with the CAA's regulatory scheme for stationary sources because EPA has not clearly characterized the state of air quality, as measured by the NAAQS, in the areas subject to the rules. This commenter and a number of others also questioned how EPA determined the stringency of the proposed emission limitations, with some commenters stating that the requirements should be more stringent, other commenters stating that the requirements should be less stringent, and some noting that the levels appear to be arbitrary.

A local government agency commented that instead of adopting Federal requirements, EPA should use the process of approving Tribes for ''treatment in the same manner as a State'' (commonly referred to as ''TAS''), set forth in the CAA. One commenter stated that EPA should ensure that the proposed rules do not circumvent the TAS process as the method for approving Tribes to administer programs under the CAA.

Other commenters criticized EPA for not establishing milestones to implement CAA provisions as soon as practicable, since States and delegated local air agencies must do so. These commenters also criticized EPA for not establishing schedules for implementation, as States are required to do under the CAA.

EPA Response. In the final rule entitled ''Indian Tribes: Air Quality Planning and Management,'' generally referred to as the ''Tribal Authority Rule'' or ''TAR,'' EPA explains that it intends to use its authority under the CAA ''to protect air quality throughout

Indian country[1]'' by directly implementing the CAA's requirements where Tribes have chosen not to develop or are not implementing a CAA program. 63 FR 7254, February 12, 1998. The final TAR at 40 CFR 49.11 states that EPA would ''promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality'' for these areas. EPA is exercising its authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate FIPs in order to remedy an existing regulatory gap under the CAA with respect to Indian reservations located in Idaho, Oregon, and Washington. Although many facilities in these areas may have historically followed State and local government air quality programs, with only one exception, EPA has never approved those governments to exercise regulatory authority under the CAA on any Indian reservations.[2] Since the CAA was amended in 1990, EPA has been clear in its approvals of State programs that the approved State program does not extend into Indian country. It is EPA's position that, absent an explicit finding of jurisdiction and approval in Indian country, State and local governments lack authority under the CAA over air pollution sources, and the owners or operators of air pollution sources, throughout Indian country. Given the longstanding air quality concerns in some areas and the need to establish requirements in all areas to maintain CAA standards, EPA believes that these FIP provisions are appropriate to protect air quality on the identified reservations. The rules published today are based on the same CAA authority as EPA has used elsewhere in rulemaking that has been affirmed by the courts. As described below in II.D, EPA's interpretation of its authority has been affirmed by the U.S. Court of Appeals for the District of Columbia Circuit in *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001). In addition, EPA's authority to issue operating permits to major stationary sources located in Indian country under Title V of the Act, pursuant to regulations at 40 CFR part 71, was affirmed in *State of Michigan* v. *EPA*, 268 F.3d 1075 (D.C. Cir. 2001). EPA has used this same authority to issue a number of FIPs to address air pollution concerns at specific facilities located in Indian country. See Federal Implementation Plan for Tri-Cities landfill, Salt River Pima-Maricopa Indian Community, 40 CFR 49.22 (64 FR 65663, November 23, 1999) and Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM10 Nonattainment Area, 40 CFR 49.10711 (65 FR 51412, August 23, 2000).

Effects of State Law. The rules established by EPA here are in effect under the CAA. EPA recognizes that in a few cases, other governmental entities may have established air quality or fire safety requirements that the commenters believe apply to them for the same activity. However, unless those rules or requirements have been approved by EPA under the CAA to apply on Indian reservations, compliance with those other requirements does not relieve a source from complying with the applicable FARR. As EPA has stated elsewhere, States generally lack the authority to regulate air quality in Indian country. See *Alaska* v. *Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 fn.1 (1998) (''Generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian Tribe inhabiting it, and not with the States.''), *California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202, 216 and n.18 (1987); see also *HRI* v. *EPA*, 198 F.3d 1224, 1242 (10th Cir. 2000); see also discussion in EPA's final rule for the Federal operating permits program, 64 FR 8251–8255, February 19, 1999. Furthermore, EPA interprets the CAA as establishing unitary management of reservation air resources and as a delegation of Federal authority to eligible Tribes to implement the CAA over all sources within reservations, including non-Indian sources on fee lands. Accordingly, even if a State could demonstrate authority over non-Indian sources on fee lands, EPA believes that the CAA generally provides the Agency the discretion to Federally implement the CAA over all reservation sources in order to ensure an efficient and effective transition to Tribal CAA programs and to avoid the administratively undesirable checkerboarding of reservation air quality management based on land ownership. EPA believes that Congress intended that EPA take a territorial view of implementing air programs within reservations. EPA believes that air quality planning for a checkerboarded area would be more difficult and that it would be inefficient if a State were to exercise regulation over piecemeal tracts of land within a reservation, possibly with similar reservation sources being subject to different substantive requirements. EPA's approach provides for coherent and consistent environmental regulation within reservations.

Although EPA does not recognize State or local air regulations as being effective within Indian country for purposes of the CAA, absent an express approval by EPA of those regulations for an area of Indian country, today's rulemaking does not address the validity of State and local law and regulations with respect to sources in Indian country, or the authority of State and local agencies to regulate such sources, for purposes other than the Federal CAA. We are specifically not making a determination that these Federal CAA rules override or preempt any other laws that have been established. For example, in the area of open burning, EPA recognizes that some Federal, State, local, and Tribal agencies may have established requirements covering topics such as solid waste management and fire safety in addition to air quality management. The general open burning rule at § 49.131 specifically provides that nothing in the rule exempts or excuses any person from complying with the applicable laws and ordinances of other governmental jurisdictions.

Application of the FARR to Sources within the Exterior Boundaries of Reservations. Since these rules will apply only to sources located within the boundaries of the specified Indian reservations, EPA believes it will be relatively easy for a source or activity located on an Indian reservation to determine whether it is subject to the provisions of the rules that are included in the implementation plan for that reservation in 40 CFR part 49, subpart M. The rules adopted here do not apply directly to sources located outside these reservations. A source that is uncertain regarding the applicability of a rule may submit a written request to EPA for an applicability determination. In

[1] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

[2] For purposes of approving the Washington Department of Ecology (WDOE) operating permits program under 40 CFR part 70, EPA explicitly found that WDOE demonstrated that the Washington Indian (Puyallup) Land Claims Settlement Act, 25 U.S.C. 1773, gives explicit authority to State and local governments to administer their environmental laws on all non-trust lands within the 1873 Survey Area of the Puyallup Reservation in Tacoma, Washington.

response, EPA will issue a written determination stating whether the source or activity is subject to a particular Federal air quality rule. In most cases, determining whether the source or activity is on an Indian reservation will be straightforward and non-controversial. For example, in most cases EPA and the source will be able to easily determine whether a source is located within the exterior boundaries of a reservation, including Tribal trust lands. If a source is located on land within the exterior boundaries of an Indian reservation recognized by the Department of the Interior, that source will be subject to the FIP established for that reservation notwithstanding the ownership status of the land.[3] EPA will not consider the status of an area to be in question if it is clearly within the boundaries of an Indian reservation.[4] In the rarer, more complex factual cases, EPA will, as appropriate, work with the U.S. Department of the Interior, Tribes, and stakeholders to assess the reservation status of the location. After EPA has reviewed the relevant materials, the Agency will send a letter to the source stating EPA's determination of whether the source is located within the boundaries of a reservation. Such sources or activities located on Indian reservations will be expected to comply with the applicable requirements of these FIPs.

EPA's Approach. EPA's intention is to promulgate Federal regulations that are an important initial step to fill the regulatory gap on Indian reservations in Idaho, Oregon, and Washington. However, EPA does not intend, nor does it expect, these gap-filling regulations to impose significantly different regulatory burdens upon industry or residents within reservations than those imposed by the rules of State and local air agencies in the surrounding areas. This approach is intended to formally ''level the playing field.'' In other words, the intent of these rules is to provide people living within reservation boundaries with air quality protection similar to surrounding areas, and to require that emissions from sources located within reservations are controlled to levels similar to those of sources located outside the reservations. EPA believes that in light of the particular air quality problems generally present on reservations in the Pacific Northwest and based on our expertise in this area, it is appropriate to establish each of the air quality rules for each reservation that are promulgated today.

These gap-filling rules are generally based upon the aspects of State and local rules most relevant to the air-polluting activities on reservations in the Pacific Northwest, and reflect a level of control of a typical air quality control program. As a general matter, these regulations are not as restrictive as the most stringent State and local rules for the same class of sources or activities; likewise, they are not as lenient as the least stringent of the State and local rules. EPA has used its best professional judgment to determine limits that provide protection where none existed yet are similar enough to adjacent rules so as to not create hardships for industry, Tribes, or the general public. In some areas a particular rule is more or less stringent than a rule in areas directly adjacent to the reservation, but on the whole, we believe these rules are roughly equivalent to the rules in surrounding jurisdictions.

EPA's final rules published here address clearly identified air pollution concerns of the Pacific Northwest Indian reservations based on information gathered in a number of ways, including review of State and local air agency implementation plans, as discussed in the proposal. EPA believes that it is appropriate to focus initially on the sources in Region 10 that have been identified as ones that may cause or contribute to prevalent air quality problems on reservations and in shared airsheds of the Pacific Northwest. Aside from existing national emissions standards and Federal requirements described elsewhere, these FIPs are the first building blocks under the CAA to address such emissions.

EPA Authority for these FIPs. As described below, EPA disagrees that its authority under the CAA is limited to regulate sources only as proven necessary to attain or maintain the NAAQS and also disagrees with the commenters' position that the Prevention of Significant Deterioration (PSD) authority of section 165 of the Act only applies to new major sources. EPA believes it has ample authority under the CAA to regulate air pollutants that may pose a threat to human health and the environment.

While the authority for EPA to establish these Federal rules for Indian reservations comes primarily from section 301(d) of the CAA, the Agency will look to all of its CAA authorities when establishing requirements that apply to both criteria and non-criteria pollutants. The primary guide for evaluating the scope of implementation plans is found in section 110 of the CAA. Section 110(a)(1) of the CAA is the basis for authority to establish implementation plan requirements that provide for the maintenance of a primary or secondary NAAQS; however, the CAA also provides authority to establish requirements for pollutants where a NAAQS has not been established. For example, the emergency power authority required by section 110(a)(2)(G) provides authority to establish requirements for pollutants where a pollution source or combination of sources is presenting an imminent and substantial endangerment to public health or welfare or the environment, without regard to whether a pollutant is regulated by a NAAQS. Under the authority of section 110 and part C of the CAA, EPA is authorized to establish requirements for regulated air pollutants for which EPA has not promulgated standards under section 109. There are also several other applicable authorities in part C of the CAA, which addresses PSD. Section 160(1) of the CAA authorizes EPA ''to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may be reasonably anticipate[d] to occur from air pollution or from exposures to pollutants in other media * * * notwithstanding attainment and maintenance of all national ambient air quality standards.'' Section 161 of the CAA states that each applicable implementation plan will contain ''emission limitations and such other measures as may be necessary * * * to prevent significant deterioration of air quality'' in attainment or unclassifiable areas. Section 110(a)(2)(D) states that each implementation plan should contain provisions prohibiting ''any source or other type of emissions activity within the State from emitting any air pollutant in amounts'' which will interfere with measures required under a part C implementation plan ''to prevent significant deterioration of air quality or protect visibility.'' These provisions of the CAA authorize EPA to establish permit conditions and other requirements to regulate activities that emit pollutants, even where pollutant

[3] Section 301(d)(2)(B) of the Act, 42 U.S.C. 7601(d)(2)(B), refers to management and protection of resources within the exterior boundaries of the reservation; section 110(o) of the Act, 42 U.S.C. 7410(o), states: ''When such [implementation] plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.''

[4] Since the rules promulgated today pursuant to Subchapter III of the Act apply only to sources within the boundaries of the specified Indian reservations, which are clearly Indian country under 18 U.S.C. 1151 and the CAA, these rules are consistent with the decision in *State of Michigan* v. *EPA,* 268 F.3d 1075 (D.C. Cir.2001).

levels in the ambient air are below the NAAQS for criteria pollutants in attainment or unclassifiable areas. The FIPs issued by EPA also can rely on other authorities in the CAA to regulate and obtain information about sources of pollutants other than NAAQS pollutants, such as our authority to require reporting and recordkeeping under section 114 of the CAA. EPA believes its authority to promulgate these rules under the CAA is clear and consistent with its previous rules promulgated pursuant to section 301(d) that were upheld by applicable courts of the United States.

The rules established here neither affect a Tribe's eligibility for TAS nor change EPA's rules establishing the TAS process. EPA is promulgating these gap-filling rules for Indian reservations in Idaho, Oregon, and Washington after consulting with the affected Tribes about air quality issues they face. These rules, as described elsewhere, are intended to fill the gap in current regulations until such time as individual Tribes develop and implement approved TIPs.

Implementation Schedule. With regard to the comment on implementation schedules, EPA thoroughly discussed in the final TAR rulemaking (63 FR 7265) how it is meeting the deadlines established in section 110 of the CAA. EPA has interpreted the CAA as offering flexibility to Tribes regarding the time needed to establish a CAA program, and the CAA does not compel Tribes to establish a CAA program. Therefore, EPA determined that it would be infeasible and inappropriate to subject Tribes to the mandatory submittal deadlines imposed by the Act on States. However, the TAR includes a specific obligation at § 49.11 to establish a FIP to protect air quality within a reasonable time as necessary or appropriate if Tribal efforts do not result in adoption and approval of Tribal plans or programs. Thus, EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP for affected Tribal areas within a reasonable time.

Section 116 of the Act. EPA believes that Federal implementation of the Act does not conflict with CAA section 116. Section 116 does not extend State jurisdiction into Indian country. Instead, section 116 provides that the CAA does not preclude or deny the right of any State to adopt or enforce any standard or limitation respecting emissions of air pollutants or any requirement respecting control or abatement of air pollution. As EPA wrote in the final rule establishing the Federal Operating Permits Rule at 40 CFR part 71 (64 FR 8247, 8252, February 19, 1999), section 116 reserves to the States the right to set State emission standards and limitations that are more stringent than and/or in addition to Federal requirements. Section 116 does not preclude EPA from implementing CAA programs. For purposes of this rulemaking, EPA does not believe it is necessary to resolve whether States are precluded from regulating air resources in Indian country solely under color of State law or whether the reservation of rights embodied in section 116 extends to any area of Indian country.

B. Open Burning Rule

The proposal to regulate open burning drew many comments. The most significant topic of concern was the proposed provision that would allow the burning of household wastes in burn barrels. Commenters were concerned about the health and fire safety risks posed by unregulated open burning of waste materials, especially for susceptible populations such as people with asthma, children, and the elderly. A wide variety of commenters questioned the exemption for burning household wastes in burn barrels, since such use is already prohibited by many State and local air quality, waste disposal, or fire safety rules or requirements.

EPA Response: EPA received many comments with compelling information about the threats to human health that can result from open burning, especially from burning garbage in burn barrels. In addition to the numerous comments that objected to allowing the burning of household wastes in burn barrels, EPA has learned of many efforts to stop backyard burning, especially in residential areas. EPA's Office of Solid Waste is implementing a national program to encourage the use of alternatives to open burning, and the State of Washington is attempting to eliminate all outdoor burning.

Based on these comments and other information, EPA is revising the final open burning rule to eliminate the exemption for burning combustible household wastes in burn barrels at single-family residences or residential buildings of four or fewer dwelling units. EPA recognizes that the use of burning to dispose of household wastes is disfavored by a wide variety of government agencies, and many residents of reservations spoke out against this practice.

The proposed exemption allowed the burning of combustible household wastes, including garbage, plastic containers, paper, paper products, cardboard, and other materials resulting from general residential activities. The only element of the proposed exemption that EPA is retaining in the final rule is to allow for open burning on-site of paper, paper products, and cardboard that are generated by single-family residences or residential buildings with four or fewer dwelling units. EPA proposed to allow the burning of household wastes in burn barrels based on our understanding that solid waste handling alternatives were not readily available to all persons living on reservations. A reservation solid waste survey conducted in 1997 (Reservation Solid Waste Survey, The Northwest Renewable Resource Center, ed. John M. Kliem) indicated that two-thirds of Tribal governments in Idaho, Oregon, and Washington do not have solid waste management programs and many reservations do not have garbage pickup service. Further, several Tribes confirmed during consultation that alternatives to residential burning were not readily available to all persons on their reservations. However EPA heard from other commenters that many reservations have access to garbage collection services. We have insufficient information to conclude that solid waste handling alternatives are readily available on all reservations. Therefore, while we are eliminating the exemption for burning combustible household wastes in burn barrels due to the health effects and other environmental and safety concerns, EPA believes, on balance, that it is not appropriate to completely prohibit the outdoor burning of paper, paper products, and cardboard at this time.

Under today's final rule outdoor burning cannot be used to dispose of garbage, plastics, or plastic products, including plastic containers and styrofoam. It should be noted that the removal of the proposed exemption for burning household wastes in burn barrels does not mean that all burning in burn barrels is prohibited by this rule. Under this rule, burn barrels may be used to dispose of materials that are allowed to be open burned, such as tree trimmings, yard waste, and paper generated by a single-family residence. EPA emphasizes that open burning must also comply with any fire safety codes or other applicable regulations that may also govern outdoor burning and the use of burn barrels.

EPA recognizes that removing the exemption from the final rule may mean that some reservation residents who currently dispose of household wastes by burning may not be in compliance with the rule. As with the other rules being published today, EPA's initial

focus on compliance assurance work will be in the form of assistance, outreach, and education that will inform affected individuals and organizations of the new rules and the adverse health effects of burning. We intend to work with Tribal and local governments to identify alternatives to open burning and plan to use a variety of tools to monitor and respond to violations of the general open burning rule. EPA's approach for implementation of the FARR is described in section II.F.

Through outreach and education, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible. EPA strongly supports Tribes, States, and other entities in continuing efforts to reduce open burning in their jurisdictions and generally encourages alternate methods for disposing of waste. EPA is working with both Tribes and States to enhance the awareness of the health concerns of open burning and facilitate the use of alternate disposal methods through outreach and recycling programs.

EPA is still concerned about the health effects of even limited outdoor burning. Therefore, we intend to continue to evaluate our approach as we gain experience implementing the rules published today, and consider whether outdoor burning should be further limited or completely banned in the future. We are interested in input regarding whether we should consider additional separate rulemaking to ban all outdoor burning on reservations, or only allow limited open burning where garbage pickup or recycling is not reasonably available.

C. Economic Impacts

In response to EPA's request in the proposal for information about the assumptions EPA used to estimate the economic impacts of the rules, a number of commenters wrote that the proposed rules may have an economic effect on the agricultural sector and could affect business development on reservations. A number of farmers and organizations that represent the farming community expressed concern that the proposed rules will establish requirements to eliminate field burning. The comments described the value of the agricultural sector within specific reservations, and expressed concern that the proposed rules in general would hinder the farmers' ability to use their land to make a living and also diminish the value of their land. Many of those commenters and several local governments were concerned that if the rules authorize Tribal governments to regulate nonmember residents of a particular reservation, the jurisdictional issues that arise from these rules would have a negative impact on businesses in the affected areas. The commenters were worried that jurisdictional conflicts could inhibit new business and industry from locating on property subject to Tribal air quality control and drive businesses out of the affected areas. However, no commenters provided any specific information about the potential economic impacts of the proposed rules.

EPA Response. The commenters in the agricultural community who expressed concern that the rules as proposed would cause economic disruption by eliminating field burning appear to have misunderstood the proposal. EPA did not propose a ban on agricultural field burning, and these final rules do not establish any ban on field burning. The rule for general open burning at § 49.131 prohibits certain materials from being openly burned, but does not prohibit agricultural burning. On the Nez Perce Reservation and Umatilla Indian Reservation, in addition to the general open burning rule, EPA is establishing a rule for agricultural burning permits at § 49.133 that requires farmers to obtain approval of a permit from EPA before conducting an agricultural burn. Currently, EPA and the Nez Perce Tribe have established an intergovernmental agreement with the Idaho State Department of Agriculture and the Idaho Department of Environmental Quality that provides for a coordinated management of agricultural burning activities in the Clearwater Airshed; if necessary, the agreement will be modified to reflect the role of these rules. EPA expects to establish a similar intergovernmental agreement with the Confederated Tribes of the Umatilla Indian Reservation. Additionally, the requirements in the FIPs for agricultural burning permits and open burning are similar to requirements in surrounding jurisdictions.

As discussed elsewhere, a number of commenters misunderstood the proposed rules as providing authority to Tribal governments over nonmembers. The commenters' concerns that the FARR would inhibit new businesses and drive out existing businesses appear to be based upon this misunderstanding. The FIPs are Federal rules issued by EPA under the Federal CAA, and do not provide any authority for Tribes to use Tribal laws to regulate nonmember conduct on any reservation or for Tribes to enforce Tribal law against nonmembers in Tribal courts. Since these rules are Federal rules, we are not expressing any opinion about the validity of such concerns at this time. From a Federal perspective, EPA already regulates businesses on these Indian reservations under the CAA under existing Federal regulatory programs such as the PSD, National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS) programs. Today's rules establish additional Federal requirements for industry and residents on reservations that are similar to the requirements imposed by the rules of State and local air agencies in the surrounding areas. The rule authorizing non-Title V operating permits at § 49.139 offers a real benefit to industry and businesses by providing a means to obtain enforceable limits on the source's potential to emit for purposes of PSD, Title V, or section 112 of the Act. Today's rules also provide greater certainty to businesses by clearly identifying applicable CAA requirements.

In developing the proposed rulemaking, EPA estimated the economic impacts of these requirements in an Economic Impact Analysis (EIA). In the **Federal Register** notice for the proposal, EPA specifically solicited comments on certain assumptions regarding capital costs, operation and maintenance (O&M) costs, and the costs of meeting visible emission and fugitive emission requirements, conducting source tests, and meeting the sulfur content in fuel limits. EPA explained that, for the purposes of generating cost estimates in the EIA for each of the proposed rules, EPA assumed that there would be no capital costs incurred under any of these rules. EPA stated that it believes sources generally are complying with State and local rules in the absence of Federal rules because the sources may have believed they were subject to State and local rules or otherwise chose to follow such rules. Furthermore, based on information obtained from Tribal, State, and local authorities, as well as businesses and other entities affected by these rules, EPA did not anticipate that facilities would add control devices as a result of these rules. In the proposal, EPA did not estimate O&M costs to comply with these rules because insufficient data were available to estimate them. EPA has again evaluated the potential economic impacts of these rules, after

considering comments on the proposed rules. No specific information was submitted about the EIA assumptions in comments on the proposed rulemaking to indicate that the EIA prepared by EPA for the rules is incorrect. The EIA has been updated to reflect rule revisions, updated wage rates, and new information about the sources on the 39 Indian reservations. As described in the EIA, annualized labor costs are estimated to be $120,872, annualized non-labor costs are estimated to be $17,475 (which is divided between annualized start-up costs of $14,175 and recurring annual [O&M] costs of $3,300), and incremental pollution abatement capital equipment expenditures are assumed to be zero for a total estimated cost of $138,347 annually after all rules are fully implemented. These estimates are the cumulative costs for all businesses affected by the rules. The final Economic Impact Analysis is available in the docket for this rulemaking.

D. Delegation of Authority to Tribes

A number of commenters were concerned that the proposed rules would delegate authority to Tribal governments to regulate the activities of non-Tribal members on privately owned land within the reservation. The commenters believed that such rules would be unconstitutional, stating that non-Tribal citizens have no voice or representation in Tribal government and are not able to vote in Tribal elections.

Several commenters had questions about how the delegation process is different than the process for a Tribe to be approved for TAS. Several Tribes reminded EPA that the CAA was enacted with the expectation that Tribal governments would be managing air quality on reservations. The commenters asked EPA to ensure that these rules and the delegation provisions do not diminish the rights or ability of Tribes to establish requirements under Tribal law.

In its comments on the proposed delegation provision at § 49.122, a State environmental agency stated that it supported delegation of provisions of the FARR to Tribes, but requested that the State, affected stakeholders, and local communities be given an opportunity to participate in the development of delegation agreements by at least being offered the opportunity to comment. Another local government also requested an opportunity to comment on proposed delegation agreements. The State also requested that, prior to delegation, EPA require the Tribe to demonstrate that it has sufficient resources to ensure that the terms and conditions of the agreement can be met. The State also asked EPA to explain the specific Federal functions that would be subject to delegation under the proposed regulation.

EPA Response: The rule EPA is finalizing at § 49.122 authorizes a partial delegation of administrative authority to a Tribal government for the purpose of assisting EPA in administering one or more of the Federal rules that have been promulgated for a Tribe's reservation. While a Tribe may be delegated administrative authority for one or more of the Federal rules, EPA will maintain sole authority to enforce the FARR. Since this would be a delegated Federal program, any Federal requirement administered by a delegated Tribe is subject to EPA enforcement and EPA appeal procedures, not the Tribe's, under Federal law. The delegation provision allows EPA to delegate distinct roles for assisting EPA and severable Federal regulations to qualified Tribes for administration, without requiring a Tribe to take on all aspects of the FARR. This provision provides EPA additional flexibility for implementing these rules where EPA believes delegation is appropriate. The delegation process in this rule is similar to the process EPA uses to delegate authority to States to administer Federal programs such as PSD and Title V. Nothing in these rules requires EPA to delegate administrative authorities to Tribes. The partial delegation would authorize a Tribal government to administer specific functions of the FARR rules, with Tribal government employees acting as authorized representatives of EPA. EPA and the delegated Tribe would, as appropriate, establish mechanisms to fund the work by Tribal staff, that may include Federal funding assistance through cooperative agreements and grants and/or user fees and charges established by the Tribe to fund its administrative activities on behalf of EPA. The Tribe would be authorized to administer one or more of the rules, with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA's administrative and civil judicial procedures.

As EPA stated in the proposed rulemaking, the administrative delegation from EPA to a Tribe to implement a specific Federal air rule is to be distinguished from EPA's interpretation that the CAA is a delegation of Federal authority from Congress to Tribes. It is EPA's position that the CAA TAS provision constitutes a statutory delegation of authority to eligible Tribes over their reservations. Under the CAA, Tribes may develop air programs covering their reservations and non-reservation areas within their jurisdiction for submission to EPA for approval in the same manner as States. 63 FR 7254–7259; 59 FR 43958–43960. The U.S. Court of Appeals for the District of Columbia Circuit upheld the TAR in *Arizona Public Service Co.* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000), *cert. denied* 121 S. Ct. 1600 (2001). The TAR established how EPA can approve Tribal eligibility applications for a Tribe to operate a CAA program under Tribal law using a modular approach. EPA expects that many Tribes will develop their own air quality programs. However, Tribes are not required to adopt and implement all CAA programs at once.

The approach being used in these final regulations will allow Tribes that are building air quality programs to gain experience by assisting EPA with implementation of the Federal rules before they decide to adopt their own Tribal rules. EPA recognizes that a Tribe may choose not to develop a Tribal air program under Tribal law for approval under the TAR, but may still want to assist EPA in implementing the Federal air quality requirements for its reservation and to build its capacity in managing an air quality program. However, EPA stresses that establishing a delegation agreement to assist EPA in implementing the FARR on a reservation will not affect a Tribe's eligibility for TAS. EPA anticipates that the capability and experience gained through assisting EPA will help Tribes decide whether to establish their own CAA programs to either supplement or substitute for the Federal rules for their particular reservation.

EPA recognizes that a number of the commenters believe it is unconstitutional for a Federal law to subject nonmembers to the laws of an Indian Tribe. As noted above, however, these commenters have misunderstood these rules because the FARR consists of Federal requirements, to be enforced by the Federal government. Still, it is important to note that the commenters' concerns have been addressed by the courts including, as noted above, in relation to EPA's interpretation of the CAA TAS provision as a Congressional delegation of authority to Tribes over their reservations which was upheld by the U.S. Court of Appeals for the D.C. Circuit.

EPA stresses that a delegation agreement is not the only mechanism by which a Tribe can assist EPA in implementing one or more of the rules. EPA may choose to make arrangements

with Indian Tribes under a variety of Federal assistance authorities, such as grants, cooperative agreements, or contracts, where the work to be accomplished would be specified in the financial assistance documents.

The final rule at § 49.122 retains the same provision as proposed by EPA to delegate to a Tribe the authority to help EPA implement the FARR on the Tribe's reservation. EPA is, however, making several revisions to the rules in response to comments. For example, the title of the rule is changed to read ''Partial Delegation of Administrative Authority.'' This revised title is designed to clarify that the rule authorizes EPA to delegate only the authority to assist in the administration of, but not enforce, the rules. The final rule at § 49.122(a) explicitly states that the rules covered by a delegation agreement would be enforced by EPA, as appropriate.

In response to requests for an opportunity to participate in the development of these partial delegation agreements, this rule includes a new subsection, § 49.122(d)(1), that provides for stakeholder involvement prior to completing a partial delegation agreement. This new subsection of the rule provides that prior to completing a partial delegation agreement under the rule, EPA will consult with appropriate governmental entities outside of the specified reservation, and with city and county governments located within the boundaries of the specified reservation. EPA has defined appropriate governmental entities as States, Tribes, and other Federal entities located contiguous to the Tribe applying for eligibility. See generally, 56 FR 64876, 64884 (December 12, 1991) and 63 FR 7267 (February 12, 1998). EPA does not believe that it is necessary or appropriate to require additional public participation procedures for establishing a partial delegation agreement between EPA and a Tribe because it will be limited to describing how a Tribe will assist EPA by administering one or more of the rules. EPA will however, publish a notice in the **Federal Register** informing the public of any partial delegation agreement for a particular Indian reservation and will indicate such delegation in the implementation plan for the Indian reservation. EPA will also publish an announcement of the partial delegation agreement in local newspapers.

EPA agrees that it will delegate authority to help administer these rules only to Tribes capable of doing the work properly. The final rule is modified to expressly require a Tribe to demonstrate both the technical capability and adequate resources to administer the rule under a partial delegation agreement. The FARR at § 49.122(b) describes the criteria a Tribe must meet when applying for a partial delegation, including that the Tribe has (or is acquiring) the technical capability and resources to carry out the aspects of the rules and provisions for which delegation is requested. As already noted, EPA has no obligation to delegate administrative authorities to Tribes, and we will do so only where the Tribe has demonstrated that the work will be carried out properly. EPA also expects the partial delegation agreements will include provisions to regularly review performance by the Tribe and identify implementation issues that could be addressed by modifying the delegation agreement.

Consistent with the proposal, this final rule does not list the rules or Federal functions that may be delegated. For some portions of the FARR, EPA expects to initially retain full administration of the program without administratively delegating any aspects to Tribes so that we can gain experience with the process for implementation and become familiar with the regulated community. For example, EPA wants to gain experience with implementing the rule for non-Title V operating permits at § 49.139 by using Federal administrative procedures. A number of rules are not subject to delegation because they are self-implementing standards that are to be met by the regulated community, such as the rules at § 49.124 (Rule for limiting visible emissions), § 49.125 (Rule for limiting the emissions of particulate matter), § 49.126 (Rule for limiting fugitive particulate matter emissions), § 49.127 (Rule for woodwaste burners), § 49.128 (Rule for limiting particulate matter emissions from wood products industry sources), and § 49.129 (Rule for limiting emissions of sulfur dioxide). On the Nez Perce Reservation, where we have been working closely with the Tribe, and the Umatilla Indian Reservation, where EPA is promulgating burning permit programs for both reservations, EPA expects to establish delegation agreements with the Tribes to provide local handling of permitting and implementation needs.

Tribal governments will be able to provide a variety of expertise to assist EPA in implementing these rules. For example, EPA anticipates arrangements for administering the open burning rule may include coordination with local fire marshals and fire safety officials. The specific provisions of each delegation agreement will be tailored, as appropriate, in light of each Tribal government's operations, the location of the reservation, or other relevant factors.

E. Public Participation in the Rulemaking

When the proposed rules were published on March 15, 2002, EPA provided a 90-day public comment period ending on June 13, 2002. Before the close of the comment period, some local governments and several individuals requested more time to comment on the proposed rules, writing that more time was needed to provide all affected parties an opportunity to comment and to allow thorough review of the proposed rules by elected officials. In response to the requests for additional time to comment on the proposal, EPA reopened the comment period from August 9, 2002 until October 10, 2002 and held a public hearing in Toppenish, Washington, on the Yakama Reservation, on September 10, 2002. The hearing was advertised in various newspapers in Washington, Oregon, and Idaho. EPA offered an afternoon information session for questions and answers before the evening hearing in Toppenish. Approximately 90 people attended the information session and hearing, and 28 people testified at the hearing. A copy of the transcript from the public hearing is in the docket.

During the second comment period, EPA received a number of additional comments requesting more time for public participation. A number of commenters criticized EPA for consulting with Tribal governments for a number of years during the development of the proposed rules, and stated that EPA had not provided adequate time for local governments to participate. A number of other commenters wrote that EPA had offered enough time for interested parties to comment.

Several comments criticized EPA, asserting that EPA failed to follow the EPA Public Involvement Policy (46 FR 5736, January 19, 1981 and 68 FR 33946, June 6, 2003) for early consultation and involvement prior to publishing the proposed rules. Commenters also stated that EPA failed to comply with Executive Order 13132 on Federalism, asserting that EPA did not meet its requirements for early consultation with State and local officials during rule development. Several commenters stated that EPA had not completed an environmental assessment of the rules, which the commenters believed was subject to the National Environmental Policy Act (NEPA).

EPA Response: EPA believes it provided adequate time and opportunity for the public, as well as State and local agencies, to fully participate in the rulemaking. EPA invited review of the proposed rules from State and local air agencies well in advance of starting the public comment period in March 2002, reopened the original 90-day comment period at the request of commenters, and held a public hearing one month before the public comment period ended.

When determining how much time to offer for public comment, EPA also considered that State and local air agencies had opportunities to review and comment on the proposal well in advance of the public comment period. As noted in the proposal, EPA provided advance draft copies of the proposed rules to State and local air agencies in Idaho, Oregon, and Washington. Specifically, EPA provided a draft of the proposal to State and local air agencies in July 2001 and solicited input. Generally, the States and local air agencies were pleased that EPA was developing rules for Indian reservations and provided useful feedback on the draft.

EPA disagrees with the commenters who think that EPA should not have worked so closely with Tribal governments. The Agency believes it has proceeded with this rulemaking consistent with all Agency policies and Presidential directives. The approach EPA followed to consult with affected Tribes in Region 10 in the development of these rules is consistent with EPA's National Indian Policy, Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249 (November 6, 2000), and other Federal policies on Tribal consultation that require EPA to develop an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.

Moreover, as discussed above, EPA also provided State and local air agencies an opportunity to review and comment on a complete draft. When we issued the proposed rules, EPA published many notices of the public comment opportunity and offered to hold a public hearing if requested. When we decided to reopen the comment period, we gave widespread notice of the additional time and of the scheduled public hearing. The fact that many citizens and Tribal, State, and local governments were aware of the proposal, submitted written comments, and attended the public hearing demonstrates the effectiveness of the notice provided. The public participation process EPA used here is consistent with EPA's Public Involvement Policy, that by its terms is designed merely to guide the Agency's efforts. EPA also has fully complied with all Executive Orders applicable to this rulemaking. In the proposal, EPA specifically evaluated Executive Order 13132, Federalism, concluding that it did not apply to the proposed rules because they will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. These rules only prescribe regulations for facilities in areas where a State does not administer an approved CAA program, and thus do not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rulemaking. In summary, EPA believes that we have met all requirements for public participation applicable to this rulemaking.

With regard to NEPA, Congress passed the Energy Supply and Environmental Coordination Act in 1974, which exempts all actions under the CAA from NEPA.

F. Implementation of the Rules

Commenters from Tribes, States, and local air agencies generally supported the FARR and encouraged EPA to finalize the rules. A number of commenters asked how EPA is planning to implement the FARR on the 39 Indian reservations, and requested more information about the resource needs, timeframe, and scope of Federal implementation of the rules, and how Tribes will be involved in the implementation. Commenters with concerns about enforcement of the rules asked how EPA is going to ensure compliance. Other commenters had specific suggestions for revising the proposed rules so as to minimize the burden on the regulated businesses.

EPA Response: EPA has developed an Implementation Framework as a first step toward describing our overall approach to FARR implementation. The Implementation Framework, which is a working draft subject to further changes and refinement, is intended to give a general sense of EPA's approach to the implementation of each section of the FARR; how EPA intends to align resources with implementation needs; and the ways in which EPA will involve Tribes in FARR implementation. This document, ''Framework for Implementation of the FARR'' is available in the docket.

The level of effort needed for EPA's implementation planning and response will vary among different parts of the FARR. EPA has experience in the areas of permitting, compliance monitoring, complaint response, and enforcement in Indian country, so refining these programs to include full implementation of the FARR should be relatively straightforward. For elements such as a source registration system, a burn permit program, or monitoring air pollution episodes, much more work will be needed to develop the programs and integrate them into EPA's ongoing work. As EPA develops experience in implementing these rules, we expect that such experience will lead to refinements in our implementation approach and, possibly, to proposals for rule changes.

1. Compliance Dates

The effective date of the final rules is June 7, 2005. Air pollution sources within the exterior boundaries of an Indian reservation in Idaho, Oregon, or Washington, as set forth in 40 CFR part 49, subpart M, will be required to comply with the requirements in the final rules beginning on the effective date. A few of the rules require sources to take specific actions by certain dates, and these ''implementation dates'' are also clearly identified in the final rules. For example, the registration rule at § 49.138 requires existing sources (except for those exempted) to submit an initial registration by February 15, 2007; the burn permit rules at § 49.132, § 49.133, and § 49.134 require people who want to burn on the Nez Perce Reservation to apply for a permit beginning on the effective date of the FARR; and the burn permit rules at § 49.132, § 49.133, and § 49.134 require those who want to burn on the Umatilla Indian Reservation to apply for a permit beginning on January 1, 2007.

2. Resources

As noted above, a number of commenters urged EPA to provide sufficient resources for implementation activities, such as responding to complaints and taking enforcement actions where there are violations of the rules. Tribes also encouraged EPA to continue to support capacity-building by Tribes for Tribal air programs and to provide adequate resources so the Tribes can assist EPA in administering the rules.

As we stated when proposing these rules, EPA is issuing regulations that it believes it has the resources to

implement and enforce. Over the near term, EPA does not anticipate adding significant new resources, either for EPA or for the Tribes, for implementation of the FARR, although EPA expects to shift some existing resources to respond to the FARR workload. Since EPA is committed to continue funding Tribes to build their capacity for air quality matters, EPA Region 10 will seek additional national and regional resources as needed or appropriate to support Tribes and to further this innovative regional initiative.

To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. EPA is making a number of changes to the final rules to this end, such as phasing in the implementation of the open burning rule at § 49.131 and the burn permits programs at §§ 49.132–49.134, and exempting de minimis sources from the registration rule at § 49.138. For a more detailed discussion of these rule changes, see section III of this document. The ''phasing in'' of requirements for different elements of the FARR will help EPA spread out the implementation work and prioritize our resources for implementation.

EPA is phasing in the open burning rule at § 49.131 by focusing on outreach and education in the initial stages of implementation, as discussed further below. EPA is also using a phased approach to establish burn permit programs for agricultural burning, forestry burning, and open burning on the Nez Perce Reservation and the Umatilla Indian Reservation. EPA is first starting the burning permit programs on the Nez Perce Reservation, where EPA and the Tribe have been operating under an intergovernmental agreement with the Idaho Department of Environmental Quality and the Idaho State Department of Agriculture to manage agricultural field burning in the Clearwater Airshed. For the Nez Perce Reservation, anyone who wants to conduct agricultural, forestry, or open burning after the effective date of the FARR must apply for and obtain a permit. For the Umatilla Indian Reservation, anyone who wants to conduct agricultural, forestry, or open burning after January 1, 2007 must apply for and obtain a permit. These dates will provide time for EPA and the Tribes to develop burning permit programs.

EPA also is limiting the burden on regulated sources and itself by exempting sources with relatively insignificant emissions from registration and emissions reporting requirements under the registration rule at § 49.138. Examples of exempted sources include air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant, single family residences, small boilers and heaters used for space heating, and open burning. EPA believes that an accurate inventory of sources and emissions can be assembled for purposes of air quality management without requiring sources with small or de minimis emission levels to register.

3. Outreach and Education

One of the most important aspects of implementation of the FARR will be outreach to affected communities. EPA is developing a comprehensive outreach strategy that includes plans to adequately educate people and sources affected by the FARR. EPA will provide appropriate information to each sector (e.g., citizens, Tribal governments and air quality staff, and source owners and operators) so that they understand what the rules require of them. The outreach strategy will also address timing for delivery of outreach and the resources available to provide adequate outreach. EPA intends to involve stakeholders in the development of outreach plans so the materials created will be effective and culturally-sensitive for both Tribal members and non-Tribal members living on the reservations.

EPA expects that the air pollution episode rule at § 49.137 (see below) and the open burning rule at § 49.131 will require the most outreach resources. Through outreach and education, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible. In addition to communicating the threats to human health that can result from improper use of burn barrels and residential waste burning in general, we will communicate the requirements of the rule, including what can and cannot be burned.

Implementation of the open burning rule as it relates to residential activities will pose unique challenges in assuring compliance. EPA recognizes that removing the exemption for burning combustible household wastes in burn barrels from the final rule may mean that some reservation residents who dispose of household wastes by burning may not be in compliance with the rule. EPA anticipates the need to work with Tribes to design and implement effective outreach and education, design and implement complaint tracking and response programs, and work cooperatively with solid waste programs to address alternatives to burning.

As with the other rules being published today, EPA's initial focus on compliance assurance work will be in the form of outreach efforts to inform affected individuals and organizations of the new rules. We intend to work with Tribal governments and other stakeholders, such as local governments, to identify alternatives to open burning, and expect to use a variety of tools to monitor and respond to violations of the general open burning rule. EPA will prioritize which reservations receive the outreach and education resources first based on many factors, including the severity of the problem to be addressed and overall outreach prioritization. EPA will also give priority to the reservations where the Tribes are interested and able to assist with implementation of this rule.

EPA also plans to provide an information point of contact, such as a toll-free telephone number, to answer questions, provide forms, and provide other FARR-related information. EPA will also have information available on the EPA Region 10 website at *http://www.epa.gov/r10earth/FARR.htm.*

4. Compliance Assurance

EPA anticipates its compliance assurance and enforcement policies will be similar to response policies currently used by State and local air agencies in Region 10 for similar types of violations, but with the additional use of the Region 10 Enforcement Procedures in Indian Country (available in the final rule docket).

EPA defines ''compliance assurance'' broadly to include compliance assistance, compliance incentives, compliance monitoring, and enforcement response. The FARR compliance assurance program will include all four elements. Compliance assistance is closely linked to the overall outreach effort so that the regulated community understands the new rules and what they must do to comply. Compliance monitoring includes a wide range of activities to evaluate and determine compliance such as on-site inspections and review of records, monitoring results, and other information about, or from, regulated sources. Compliance incentives will be guided by EPA's Audit Policy and Small Business Policy. Enforcement response to violations generally takes a variety of forms depending on the nature of the

compliance issue and the relative priority for EPA response.

As a general approach, EPA will focus initially on compliance monitoring and enforcement for regulated industrial sources. Priority will be given to facilities that meet the definition of ''major facility'' or that are non-major stationary sources of interest to EPA due to their pollution potential.

To implement the compliance assurance program, we will use EPA staff and, where available, staff of the Tribal government for that reservation. EPA may also use other resources, such as a ''circuit rider'' to assist EPA in the field by making regular visits to conduct specific oversight or provide technical assistance to Tribes. Although such arrangements to assist EPA may be in the form of contracts, EPA also will look for opportunities to promote Tribal participation through formal agreements such as partial delegations or Direct Implementation Tribal Cooperative Agreements (DITCAs), and through work-sharing and collaboration where there is no formal delegation (e.g., EPA may request that a Tribe conduct fact finding in response to complaints or make opacity readings) as discussed below.

5. Partial Delegation Agreements

EPA anticipates that it will establish delegation agreements with Tribes in order to best use limited resources for implementing the FARR on 39 Indian reservations. The FARR authorizes a partial delegation of administrative authority to a Tribal government for the purpose of assisting EPA in administering one or more of the Federal rules. Under § 49.122, EPA may delegate administration of distinct and severable Federal regulations to a qualified Tribe, without requiring a Tribe to administer all aspects of the FARR. While a Tribe may be delegated administrative authority for the Federal rules, EPA will maintain sole authority to enforce the FARR.

EPA is developing standard procedures for negotiating delegation agreements. Procedures will cover eligibility criteria, timing and mechanisms for delegation, requirements for documentation of eligibility, opportunities for input on the delegation agreement, and monitoring of performance under the agreement.

Although the partial delegation rule provides a process for EPA to formally delegate administration of one or more of the FARR requirements to a Tribe, Tribes can provide substantial assistance to EPA without a delegation agreement. For example, pursuant to a grant under section 103 of the CAA, Tribal air staff could distribute information packets to regulated sources, coordinate Tribal air and solid waste alternatives to burning, or otherwise serve as EPA's on-scene assistant for implementation of the rules. Where an official partial delegation agreement is not yet in effect, EPA will explore the use of Memoranda of Agreement, grants, cooperative agreements, and other forms of agreement to document understandings about respective roles and responsibilities for such tasks.

Experience involved in implementing the FARR will help EPA and the Tribes identify which rules are most appropriate for delegation to Tribes. It will also help to identify the most efficient mechanisms to provide needed financial support for Tribal assistance. Because assisting with the FARR will build Tribal capacity to adopt Tribal air quality regulations, it will serve as a logical step in moving the Tribes toward development of their own TIPs. Several Tribes have expressed an interest in assuming delegation of administrative authority for one or more provisions of the FARR. Others have indicated that they wish to help in other ways.

These partial delegation agreements would authorize a Tribal government to administer specific functions of the FARR rules, with Tribal government employees acting as authorized representatives of EPA. EPA and the delegated Tribe would, as appropriate, establish mechanisms to fund the work by Tribal staff, that may include Federal funding assistance through cooperative agreements and grants, and/or user fees and charges established by the Tribe to fund its administrative activities on behalf of EPA. Under a delegation agreement, the Tribe would be authorized to administer one or more of the rules, with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA's administrative and civil judicial procedures. For more discussion on delegation, please see section II.D of this document.

6. Burn Bans

Implementing the general rule for open burning (§ 49.131) and the rule for air pollution episodes (§ 49.137) will require significant EPA coordination with local partners to inform individuals living on reservations of poor air quality episodes and the mandatory burn bans that accompany such episodes. Under the FARR, the Regional Administrator may issue an air stagnation advisory when meteorological conditions are conducive to the buildup of air pollution. An air pollution alert, air pollution warning, or air pollution emergency may be declared by the Regional Administrator whenever it is determined that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. Burn bans may also be declared whenever particulate matter levels exceed, or are expected to exceed, 75% of any NAAQS for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

State and local air agencies in Region 10 currently declare burn bans and issue air stagnation advisories, alerts, warnings, and emergencies for areas within their jurisdiction, including areas adjacent to or surrounding the reservations. Prior to implementing the FARR, EPA will establish a protocol with these State and local air agencies for coordination of burn bans and air quality announcements. When a State or local air agency declares a burn ban or an air pollution episode, EPA will determine if similar conditions also exist within any reservations. To determine if similar conditions exist within a reservation, EPA will consider existing air quality as measured by air quality monitors determined to be representative of air quality on each reservation. Once EPA determines that it is appropriate to declare a burn ban and/or an air pollution episode on a reservation, EPA will take appropriate steps to communicate this information to the residents of the affected reservation.

Initially, EPA's implementation of the burn ban provisions and the air pollution episode rule will rely largely on air quality data being collected at existing air monitors operated by State and local air agencies. Over time, and as resources permit, an increase in continuous air monitors located on reservations would provide additional air quality data that EPA would consider prior to declaring burn bans or air pollution episodes for reservations. Reservations that would be candidates for additional continuous monitors are those where the existing State and local monitoring networks may not adequately characterize the air quality on the reservations and where elevated levels of pollution could be expected to occur.

7. Part 71 Permits

40 CFR part 71 authorizes the Agency to administer a Federal operating permit program in areas without an approved

permitting program under 40 CFR part 70 (40 CFR part 71). Promulgation of the FARR will compel ''reopening for cause'' of the part 71 air operating permits that EPA has already issued on the covered reservations to include FARR requirements.[5] The procedures for re-issuing such a permit are the same as for issuing initial and renewed permits. Because some permits will have less than three years remaining on their terms, they will not need to be reopened when the FARR becomes effective, but will be updated when their term naturally expires. The FARR requirements are effective for part 71 sources upon the effective date of this rulemaking even though the requirements may not yet be incorporated in the part 71 permit.

For part 71 sources, adding the FARR requirements will fill important gaps in the permits such as limits for visible emissions, particulate matter, sulfur dioxide, etc. To speed up and simplify the process, EPA may use a single notice and comment opportunity for multiple permits.

G. Applicability of the Rules to Specific Source Categories

EPA received numerous comments on the proposed emission limitations, permitting provisions and other control measures. Comments were submitted by State and local air authorities, Tribes, industries, farmers, other governmental agencies, and the general public. EPA is making a number of revisions to the proposed rules as a result of these comments. These revisions are described later in this preamble in the section titled ''Summary of the Final Rules and Significant Changes from the March 2002 Proposal.'' A complete summary of the comments on each rule, and EPA's response to those comments, is included in the ''Response to Comment'' document, which is available in the docket.

The most frequent type of comments, which were submitted by many different parties, involved the categories of air pollution sources that EPA proposed to exempt from each of the various rules. Some commenters asked for more source categories to be exempted while other commenters requested that certain exemptions be removed from the proposed rules. In response to these comments, EPA is making only minor changes to the exemptions for the various rules. In some instances, EPA agreed with the commenter that the rule was not appropriate for application to a suggested source category and is adding that category to the exemptions. In most cases, EPA disagreed with the commenter and is retaining the exemptions as proposed.

We recognize that some of these exempted source categories may have the potential to be areas of concern and may be regulated in other areas of the Region. We do not have sufficient information at this time, however, to determine that they are a problem in need of regulation on the 39 Indian reservations in Idaho, Oregon, and Washington. This rulemaking is a first step to fill the regulatory gap on Indian reservations in Idaho, Oregon, and Washington. As we have noted elsewhere, in the future we may promulgate additional rules if we determine the rules are necessary or appropriate.

Finally, EPA notes that § 49.135 provides regulatory authority to address specific air quality problems associated with any air pollution source, even those exempted from particular emission standards. While sources such as single family residences, agricultural activities, and public roads are exempted from certain rules, should EPA determine that further controls are needed pursuant to § 49.135, EPA may establish a source-specific requirement if such would be appropriate.

III. Summary of the Final Rules and Significant Changes From the March 2002 Proposal

EPA believes that in light of the particular air quality problems generally present on reservations in the Pacific Northwest, it is appropriate to establish the air quality rules for each reservation that are adopted today. These rules will regulate activities, pollutants, and sources by supplementing the existing Federal regulatory requirements such as the PSD, NESHAP, and NSPS rules. Today's rules will provide additional regulatory tools for EPA to use to implement the CAA on Indian reservations and help to fill the current regulatory gap that exists in controlling important sources of air pollution on Indian reservations in Idaho, Oregon and Washington.

The FIPs for each reservation include a number of basic provisions to establish the infrastructure of a CAA regulatory program. The basic FIP rules that will apply on all 39 reservations include § 49.123 General provisions; § 49.124 Rule for limiting visible emissions; § 49.125 Rule for limiting the emissions of particulate matter; § 49.126 Rule for limiting fugitive particulate matter emissions; § 49.129 Rule for limiting emissions of sulfur dioxide; § 49.130 Rule for limiting sulfur in fuels; § 49.131 General rule for open burning; § 49.135 Rule for emissions detrimental to public health or welfare; § 49.137 Rule for air pollution episodes; § 49.138 Rule for the registration of air pollution sources and the reporting of emissions; and § 49.139 Rule for non-Title V operating permits.

Also, EPA is establishing certain additional rules for specific reservations where EPA has determined, in consultation with the relevant Tribe, that such additional regulatory measures are appropriate. During the course of its consultation with Tribes and analysis of regulatory needs, EPA found, for example, certain types of wood products industries, or certain practices of agricultural or forestry burning, were prevalent on particular reservations and could be important contributors to air pollution concerns. Therefore, in close consultation with specific Tribes, EPA is promulgating additional rules for three Indian reservations, including § 49.127 Rule for woodwaste burners on the Colville and Nez Perce Indian Reservations; § 49.128 Rule for limiting particulate matter emissions from wood products industry sources on the Colville and Nez Perce Indian Reservations; § 49.132 Rule for general open burning permits on the Nez Perce and Umatilla Indian Reservations; § 49.133 Rule for agricultural burning permits on the Nez Perce and Umatilla Indian Reservations; and § 49.134 Rule for forestry and silvicultural burning permits on the Nez Perce and Umatilla Indian Reservations.

EPA proposed that § 49.136 Rule for emissions detrimental to persons, property, cultural or traditional resources would apply on two reservations, the Nez Perce Reservation and the Umatilla Indian Reservation and § 49.135 Rule for emissions detrimental to public health or welfare would apply on all other reservations in Idaho, Oregon, and Washington. Because EPA is not finalizing § 49.136 at this time, we are promulgating § 49.135 for the Nez Perce and Umatilla Indian Reservations

[5] As previously state in section II.A, although the authority for EPA to establish these Federal rules for Indian reservations comes primarily from section 301(d) of the CAA, the Agency has looked to all of its CAA authorities in issuing these FIPs. EPA also made clear that it is issuing these FIPs primarily as a first step in meeting the goals of section 110(a) of the CAA. See 67 FR 11749. It is EPA's position that the requirements of these FIPs are ''standards or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implement the relevant requirements of the Act'' and thus are ''applicable requirements'' as defined in 40 CFR 70.2 and 71.2. As such, the requirements of these FIPs must be included in Title V air operating permits issued to Title V sources subject to these FIPs.

in place of § 49.136, as described in the proposal. See 67 FR 11751.

In developing these regulations, EPA also had two other objectives in mind, in addition to filling the regulatory gap. First, EPA is issuing regulations for which it has the technical capability and adequate resources to implement and enforce them. As described above, EPA is developing an Implementation Framework to guide how EPA and the affected Tribes will implement the rules on each reservation. To the extent practicable, these regulations minimize the implementation burdens upon EPA and the regulated community while establishing requirements that are unambiguous and enforceable. EPA is changing the final rules to this end, such as exempting *de minimis* sources from the registration rule at § 49.138.

Second, EPA anticipates that these regulations can serve as models for Tribes as they develop their own air quality programs. EPA will continue to encourage Tribes to develop individual TIPs and will work with Tribes seeking to replace these rules with TIPs. These FIPs will apply until they are replaced by Tribal regulations in an approved TIP.

The following paragraphs summarize each of the rules that are made final today and any significant revisions to the rules that EPA proposed. Some of the changes to the rules are discussed above in the section on the major issues raised by commenters. Other significant changes to the rules are discussed below. A more detailed discussion of rule revisions made in response to public comments can be found in the Response to Comments document. The actual rule requirements will be published in 40 CFR part 49, subpart C.

Changes that affect several sections. Since the time that this rulemaking was proposed, the new PM2.5 NAAQS have become effective, and therefore, the FARR is revised to recognize that there are now particulate matter ambient air quality standards for both PM10 and PM2.5. EPA is revising the final rules to include a definition of PM2.5 and to revise the definition of particulate matter to include PM2.5. These changes to the rules have no effect upon the emission limitations established here, but acknowledge that the emission limitations will control both PM10 and PM2.5. EPA is not adding specific PM2.5 levels to § 49.137, Rule for air pollution episodes, at this time. After EPA revises part 51 to establish episode levels for PM2.5, EPA Region 10 will revise this rule accordingly. The list of pollutants to be reported under § 49.138, Rule for the registration of air pollution sources and the reporting of emissions, is revised to include PM2.5, which is consistent with the new emissions inventory reporting requirements at 40 CFR part 51, subpart A.

In response to comments, EPA is removing several paragraphs (§ 49.124(e)(3), § 49.125(e)(2), § 49.127(d)(2), § 49.128(d)(2), and § 49.129(e)(3)) from the final rules that state that these rules do not require any person to conduct a source test unless specifically required by the Regional Administrator in a permit to construct or a permit to operate. While EPA does not agree with the commenter that these statements would limit EPA's authority to obtain emission information, we do agree that they are unnecessary and possibly confusing. Though EPA is removing this language from the rules, it does not change the fact that the FARR, in and of itself, does not require sources to conduct a source test, but that a source test may be required through other means (permit to construct, permit to operate, order under section 114, etc).

Section 49.122—Partial delegation of administrative authority to a Tribe. Section 49.122 establishes a process for EPA to delegate to a Tribal government the authority to assist EPA in administering one or more of the Federal rules that have been promulgated for the Tribe's reservation. This provision sets out the process a Tribe must follow to request a partial delegation, how that delegation will be accomplished, and how the public and regulated sources will be informed of the delegation. This provision allows EPA to delegate distinct and severable Federal regulations to a qualified Tribe for implementation, without requiring a Tribe to take on all aspects of the Federal air regulations. Nothing in these rules requires EPA to delegate administrative authorities to Tribes. As a delegated Federal program, any Federal requirement administered by a delegated Tribe is subject to EPA enforcement and EPA formal appeal procedures, not the Tribe's, under Federal law. Under a partial delegation agreement, EPA would authorize a Tribal government to administer specific functions of one or more of the FARR rules, with Tribal government employees acting as authorized representatives of EPA and with the oversight of EPA staff. Any challenges to an action will be handled directly by EPA, and any formal appeals or enforcement actions will proceed under EPA's administrative and civil judicial procedures.

The final rule modifies the proposal in several ways. This section is retitled Partial delegation of administrative authority to a Tribe to clarify that EPA will not be delegating enforcement authority to a Tribe under this provision. The final rule also explicitly states that the rules covered by a delegation agreement would be enforced by EPA. The rule is also revised to clarify that a Tribe must show that it will have both adequate resources and the technical capability to administer the delegated rule(s). Finally, to provide more participation in the development of delegation agreements, the rule provides that, prior to finalizing a partial delegation agreement with a Tribe, EPA will consult with appropriate governmental entities outside of the reservation and city and county governments located within the boundaries of the reservation.

Section 49.123—General provisions. This section includes definitions of the terms used in these rules, as well as general provisions regarding requirements for emission testing, monitoring, recordkeeping, reporting, the use of credible evidence in compliance certifications and for establishing violations, and the incorporation by reference of ASTM methods referenced in this rulemaking. Each section in these rules contains a paragraph that lists the defined terms used in that section. Note that these lists include terms used directly in the section and also terms used within the definitions of those terms.

This section is revised by adding definitions of some terms, deleting definitions of terms that are no longer used in the rules, and amending definitions of some terms. Specifically, definitions of the terms ''forestry or silvicultural activities,'' ''part 71 source,'' ''PM2.5,'' ''smudge pot,'' and ''source'' are added; the definitions of the terms ''burn barrel'' and ''combustible household waste'' are deleted; and the definitions of the terms ''actual emissions,'' ''air pollution source,'' ''emission factor,'' ''Federally enforceable,'' and ''particulate matter'' are amended to make them more understandable. Editorial changes are made to a number of other definitions to make them internally consistent or consistent with other EPA rules, such as, the new emission inventory reporting requirements at 40 CFR part 51, subpart A. Most of the substantive changes are made in direct response to public comments. The addition of the definitions of the terms ''PM2.5'' and ''source'' and the amendments to the terms ''air pollution source'' and ''particulate matter'' resulted from changes EPA made to improve the final rules.

Also note that the final rules are updated to incorporate by reference the

latest versions of the ASTM methods that are used in these rules.

Section 49.124—Visible emissions. Section 49.124 establishes that visible emissions from air pollution sources may not exceed 20% opacity, averaged over six consecutive minutes, as measured by EPA Method 9. This section does not apply to certain sources, such as: Open burning; agricultural activities; forestry and silvicultural activities; non-commercial smoke houses; sweat houses or lodges; smudge pots; furnaces and boilers used exclusively to heat residential buildings with four or fewer units; fugitive dust from public roads owned or maintained by any Federal, Tribal, State, or local government; and fuel combustion in mobile sources. The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot-blowing, and grate-cleaning for a single period of up to 15 consecutive minutes in any eight consecutive hours, but must not exceed 60% opacity at any time.

The final rule is revised in response to public comments to clarify that this section does not apply to forestry and silvicultural activities.

Section 49.125—Particulate matter. This section establishes that particulate matter emissions from combustion sources (except for wood-fired boilers), process sources, and other sources may not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven percent oxygen (for combustion sources), during any three-hour period. Particulate matter emissions from wood-fired boilers must be limited to an average of 0.46 grams per dry standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period. Exempted from this section are woodwaste burners, furnaces, and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, open burning, and mobile sources.

The final rule is revised in response to public comments to clarify that the particulate matter emission limitations do not apply to open burning. The final rule is also revised to clarify that the limitations apply to stacks that can be tested using the reference test method at any combustion source, process source, or other source.

Section 49.126—Fugitive particulate matter. This section requires the owner or operator of any source of fugitive particulate matter emissions to take all reasonable precautions to prevent fugitive particulate matter emissions and to maintain and operate the source to minimize these emissions. A person subject to this section is required to annually survey the air pollution source to determine if there are sources of fugitive particulate matter emissions, determine and document in a written plan the reasonable precautions that will be taken to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping, and then implement the plan. For new sources and new operations, including those at an existing air pollution source, a survey must be conducted within thirty days after commencing operation. For construction and demolition activities, the written plan must be prepared prior to commencing construction or modification. This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, sweat houses or lodges, non-commercial smoke houses, public roads owned or maintained by any Federal, Tribal, State, or local government, or activities associated with single-family residences or residential buildings with four or fewer dwelling units.

The final rule is revised in response to public comments to clarify that the requirements for taking all reasonable precautions to prevent fugitive emissions do not apply to open burning, forestry and silvicultural activities, sweat houses or lodges, and non-commercial smoke houses. The rule is also revised to reduce the burden by requiring an annual survey, with new surveys conducted when a new source or new operation commences operation, instead of quarterly and weekly surveys. EPA is also revising the rule so that construction and demolition activities will no longer have to perform weekly surveys, but will prepare a written dust control plan prior to commencing construction or demolition and will only do a survey if the work lasts for more than 30 days. Finally, the provision requiring owners or operators to consider the environmental implications of any particular fugitive emissions control measure is deleted from the final rule, but EPA continues to encourage owners or operators to take such effects into account when choosing the approach to complying with this section.

Section 49.127—Woodwaste burners. On the Colville Indian Reservation and the Nez Perce Reservation, EPA is promulgating § 49.127 which phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners). Until existing woodwaste burners are dismantled, visible emissions from a woodwaste burner may not exceed 20% opacity, averaged over six consecutive minutes, as measured by EPA Method 9, and only wood waste generated on-site can be burned or disposed of in the woodwaste burner. The owner or operator of a woodwaste burner, including woodwaste burners that are not currently being used, must submit a plan for shutting down the woodwaste burner to EPA within 180 days after the effective date of this rule and must shut down and dismantle the woodwaste burner by no later than two years after the effective date of this rule. Sources may apply to EPA for an extension of the two-year deadline if there is no reasonably available alternative method of disposal for the wood waste.

The final rule is revised in response to public comments to clarify that the requirement to dismantle woodwaste burners applies to all existing woodwaste burners regardless of whether or not such burners are currently operating. The effect of this rule is that by two years after the effective date of the rule, no woodwaste burner will still be operational unless an extension of the two-year deadline has been granted by the Regional Administrator.

Section 49.128—Particulate matter emissions from wood products industry sources. On the Colville Indian Reservation and the Nez Perce Reservation, EPA is promulgating § 49.128 that applies to any person who owns or operates any of the following wood products industry sources: veneer manufacturing operations, plywood manufacturing operations, particleboard manufacturing operations, or hardboard manufacturing operations. This section imposes limits on the amount of PM10 that can be emitted from such sources, in addition to the particulate matter limits for combustion and process sources in § 49.125.

The final rule is revised to clarify that the particulate matter emission limits are for the PM10 fraction and to clarify the reference method for determining compliance by indicating that Method 201A is to be used in conjunction with Method 202 to measure the total PM10 emitted by the affected sources. Method 202 is intended to be used in conjunction with either Method 201 or 201A to measure total PM10 emissions from a source with significant condensible particulate emissions.

Section 49.129—Sulfur dioxide. This section restricts sulfur dioxide emissions from combustion sources,

process sources, and other sources to no more than an average of 500 parts per million by volume, on a dry basis, corrected to seven percent oxygen (for combustion sources), during any three-hour period. Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour and mobile sources are exempt from this section.

The final rule is revised in response to public comment to clarify that the sulfur dioxide emission limitations apply only to stacks that can be tested using the reference test method.

Section 49.130—Sulfur content of fuels. This section applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, liquid fuel, coal, solid fuel, or gaseous fuel on Indian reservations. This section restricts the sulfur content of those types of fuels. Gasoline and diesel fuels, such as automotive or marine diesel fuel, regulated by EPA under 40 CFR Part 80, are exempt from this section. A person subject to this section must demonstrate compliance through recordkeeping and/or continuous monitoring or sampling. The owner or occupant of a single-family residence and the owner or manager of a residential building with four or fewer units is not subject to the sulfur content recordkeeping requirements if the furnace fuel is purchased from a licensed fuel distributor.

The final rule is revised to clarify that the sulfur limit for fuel oils applies to all liquid fuels. The exemption for mobile source fuels is revised in response to public comment to remove the requirement that the fuels actually be used in a mobile source. The effect of this change is that mobile source fuels regulated by EPA under 40 CFR Part 80 are entirely exempt from this section. The rule is also revised in response to public comment to exempt sources from the requirement to obtain, record, and keep records of the sulfur content when combusting only wood. As with the exemption for sources that combust only purchased natural gas, the source must keep records showing that only wood was burned. Sources that combust a combination of wood and other solid, liquid, or gaseous fuels must obtain, record, and keep records of all of the fuels combusted. Finally, the provision for continuously monitoring fuel gas sulfur content is revised to allow for the use of additional methods that are more appropriate for different fuel gases.

Section 49.131—Open burning. This section prohibits certain materials from being openly burned and describes the practices a person subject to this section must follow in conducting an open burn. Under this section, a number of materials may not be openly burned, such as: garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, plastic products, styrofoam, asphalt or composition roofing, tar, tarpaper, petroleum products, paints, paper or cardboard other than what is necessary to start a fire or that is generated at a single-family residence or residential building with four or fewer dwelling units and is burned at the residential site, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, batteries, light bulbs, hazardous wastes, or any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned (see actual rule language for a complete list). The following situations are generally exempted from this section: fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires set for recreational purposes, provided that no prohibited materials are burned; with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire-fighting techniques, provided that these fires are not allowed to smolder after the training session has terminated; with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials; and open burning for the disposal of diseased animals or other material by order of a public health official. All open burning, except for cultural and traditional purposes, is prohibited if the Regional Administrator declares a burn ban due to deteriorating air quality or the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency.

In response to public comment, the final rule is revised to remove the exemption for burning combustible household wastes in burn barrels at residences. The only element of the proposed exemption that EPA is retaining in the final rule is to allow for open burning on-site of paper, paper products, and cardboard that are generated by a single-family residence or a residential building with four or fewer dwelling units. The rule is also revised to clarify that it applies to the owner of the property upon which burning is conducted in addition to the person actually conducting the burning. The rule is also revised to clarify that the burn ban provisions are triggered when air quality levels have exceeded or are expected to exceed, 75% of the NAAQS for particulate matter (PM10 or PM2.5), and not the NAAQS for other pollutants.

Through education and outreach, it is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.

Section 49.132—General open burning permits. Under today's rule, any person who wants to conduct an open burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: (1) Obtain a permit for each open burn; (2) have the permit available on-site during the open burn; (3) conduct the open burn in accordance with the terms and conditions of the permit; and (4) comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. The following activities are exempt: fires set for cultural or traditional purposes, including fires within structures such as sweat houses or lodges; fires for recreational purposes, provided that no prohibited materials are burned; forestry and silvicultural burning (forestry and silvicultural burning is covered under § 49.134 Rule for forestry and silvicultural burning permits); and agricultural burning (agricultural burning is covered under § 49.133 Rule for agricultural burning permits). The Regional Administrator will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn, the current and projected air quality conditions, forecasted meteorological conditions, and other scheduled burning activities in the surrounding area in determining whether to issue the permit. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation from EPA to implement portions of this rule on their respective reservations.

The final rule is revised to remove the proposed exemption for burn barrels, to be consistent with the final general open burning rule (§ 49.131).

As discussed above, EPA is using a phased approach to establish burn permit programs for open burning, agricultural burning, and forestry burning on the Nez Perce Reservation and the Umatilla Indian Reservation to

provide time for EPA and the Tribes to develop the burn permit programs, to allocate sufficient resources, and to establish intergovernmental agreements on how EPA and each Tribe will administer the program. EPA is first starting the burning permit programs on the Nez Perce Reservation, where EPA and the Tribe have been operating under an intergovernmental agreement with the Idaho Department of Environmental Quality and the Idaho State Department of Agriculture to manage agricultural field burning in the Clearwater Airshed. For the Nez Perce Reservation, anyone who wants to conduct open burning after the effective date of the FARR must first apply for and obtain a permit for open burning. For the Umatilla Indian Reservation, anyone who wants to conduct open burning after January 1, 2007 must first apply for and obtain a permit for open burning. These dates will provide time for EPA and the Tribes to develop burn permit programs.

Section 49.133—Agricultural burning permits. Under the final rule, any person who wants to conduct an agricultural burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: (1) Apply for a permit to conduct an agricultural burn; (2) obtain approval of the permit on the day of the burn, (3) have the permit available on-site during the agricultural burn; and (4) conduct the burn in accordance with the terms and conditions of the permit. This agricultural burning permit program is a smoke management program under which final approvals to conduct burns are given on a daily basis. Prior to the requested burn days, farmers will have received preliminary permits that are effective only after the daily approvals are given. All burning activities must also comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation to administer portions of this rule on their respective reservations.

As with the general open burning permit rule and forestry and silvicultural burning permit rules at §§ 49.132 and 49.134, anyone who wants to conduct agricultural burning on the Nez Perce Reservation after the effective date of the FARR must first apply for and obtain approval of a permit for agricultural burning. For the Umatilla Indian Reservation, anyone who wants to conduct agricultural burning after January 1, 2007 must first apply for and obtain approval of a permit for agricultural burning. The provisions for approving agricultural burning permits are revised to simplify and streamline the process. The final rule provides EPA and delegated Tribes the flexibility to implement smoke management programs that, on a day-to-day operational basis, resemble those of neighboring jurisdictions or represent a typical program.

Section 49.134—Forestry and silvicultural burning permits. Under the final rule, any person who wants to conduct a forestry or silvicultural burn on the Nez Perce Reservation and the Umatilla Indian Reservation must: (1) Apply for a permit to conduct a forestry or silvicultural burn; (2) obtain approval of the permit on the day of the burn, (3) have the permit available on-site during the forestry or silvicultural burn; and (4) conduct the burn in accordance with the terms and conditions of the permit. This forestry and silvicultural burning permit program is a smoke management program under which final approvals to conduct burns are given on a daily basis. Prior to the requested burn days, land owners will have received preliminary permits that are effective only after the daily approvals are given. All burning activities must also comply with the General rule for open burning (§ 49.131) or the EPA-approved Tribal open burning rules in a TIP, as applicable. EPA anticipates that the Nez Perce and Umatilla Tribes will seek partial delegation to administer portions of this rule on their respective reservations.

As with the general open burning permit and agricultural burning permit rules at §§ 49.132 and 49.133, anyone who wants to conduct forestry or silvicultural burning on the Nez Perce Reservation after the effective date of the FARR must first apply for and obtain approval of a permit for forestry or silvicultural burning. For the Umatilla Indian Reservation, anyone who wants to conduct forestry or silvicultural burning after January 1, 2007 must first apply for and obtain approval of a permit for forestry or silvicultural burning. The provisions for approving forestry and silvicultural burning permits are revised to simplify and streamline the process. The final rule provides EPA and delegated Tribes the flexibility to implement smoke management programs that, on a day-to-day operational basis, resemble those of neighboring jurisdictions or represent a typical program.

Section 49.135—Emissions detrimental to public health or welfare. Under this section, an owner or operator of an air pollution source is not allowed to cause or allow the emission of any air pollutants, in sufficient quantities and of such characteristics and duration, that the Regional Administrator determines causes or contributes to a violation of any NAAQS; or is presenting an imminent and substantial endangerment to public health or welfare, or the environment. If the Regional Administrator makes such a determination under this section, the Regional Administrator may require the source to install air pollution controls or to take reasonable precautions to reduce or prevent the emissions. The requirements would be established in a permit to construct or permit to operate.

The final rule is revised in response to comments that the standard of ''is, or would likely be, injurious to human health and welfare'' is too vague. We revised the rule to use language from section 303 of the Act, which reads ''is presenting an imminent and substantial endangerment to public health or welfare, or the environment.'' We think that the final rule will allow us to address many of the same situations covered by the proposed rule language, while addressing the concerns raised by commenters that the proposed language is vague.

Section 49.137—Air pollution episodes. Under § 49.137, the Regional Administrator is authorized to issue warnings about air quality that apply to any person who owns or operates an air pollution source on an Indian reservation. The Regional Administrator may issue an air stagnation advisory when meteorological conditions are conducive to the buildup of air pollution. The Regional Administrator may declare an air pollution alert, air pollution warning, or air pollution emergency whenever it is determined that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. Once EPA determines that it is appropriate to issue an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency, EPA will communicate this information to the affected public. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health, describe actions that people can take to reduce exposure, request voluntary actions to reduce emissions from sources of air pollutants, and indicate that a ban on open burning is in effect. A ban on open burning goes into effect whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency.

The final rule is revised in response to public comments to indicate that the

Regional Administrator, and not the National Weather Service, will issue air stagnation advisories for the purposes of this rule because the National Weather Service no longer does this at all of its offices. The final rule is also revised to clarify that the issuance of an air stagnation advisory or the declaration of an air pollution alert, warning, or emergency is a discretionary action on the part of the Regional Administrator. The final rule is also revised to better coordinate the burn ban provisions under this section and § 49.131, General rule for open burning.

Section 49.138—Registration of air pollution sources and reporting of emissions. Any person who owns or operates an air pollution source, except those expressly exempted from this section, will be required to annually register the source with EPA and report emissions. A person subject to this section must register an existing air pollution source by no later than February 15, 2007. A new air pollution source that is not exempt must register within 90 days after beginning operation. A new air pollution sources is defined as a source that begins actual construction after the effective date of this rule, and an existing air pollution source is a source that exists as of the effective date of this rule or has begun actual construction before the effective date of this rule. Sources must re-register each year and provide updates on any changes to the information provided in the previous registration. In addition, a person must promptly report any changes in ownership, location or operation. All registration information and reports must be submitted on forms provided by the Regional Administrator. The following sources are exempt from this section, unless the source is subject to a standard established under section 111 or section 112 of the CAA: air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant; mobile sources; single-family residences and residential buildings with four or fewer units; air conditioning units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process; furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 Btu per hour; cooking of food, except for wholesale businesses that both cook and sell cooked food; consumer use of office equipment and products; janitorial services and consumer use of janitorial products; maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment; agricultural activities and forestry and silvicultural activities, including agricultural burning and forestry and silvicultural burning; and open burning. Sources subject to a standard established under section 111 or section 112 of the CAA must register.

EPA changed the date when initial registration is due for existing sources from one year after the effective date of the rule to February 15, 2007. This revision will provide time for sources to have a complete year's worth of data to submit and will provide time for outreach and education to the regulated community on the rule requirements. The final rule is revised to exempt air pollution sources with relatively insignificant emissions from the requirement to register and report emissions. Specifically, sources that do not have the potential to emit more than two tons per year of any air pollutant are exempt. The final definition of ''air pollution source'' is also revised to clarify that the two tons per year exemption applies to the combined emissions from all of the buildings, structures, facilities, installations, activities, and equipment at a location. The proposed rule exempted from registration a list of categories of sources that EPA considered to produce only *de minimis* levels of pollutants or would be an unreasonable administrative burden to register. However, sources not within the listed categories would have been required to register, regardless of how little air pollution is emitted by the source. EPA believes that an accurate inventory of sources and emissions can be assembled for purposes of air quality management without requiring these sources with small or *de minimis* emission levels to register. This is the same cutoff EPA uses to define insignificant emissions in the Federal operating permits rule at 40 CFR 71.5(c)(11)(ii)(A). Exempting small sources of emissions from the registration rule is also consistent with EPA's objective of minimizing the implementation burdens upon EPA and the regulated community. It is important to note that, irrespective of emission levels, any stationary source subject to a standard established under section 111 or section 112 of the Act is not exempt and must register. EPA also modified two of the categorical exemptions to reduce the burden of this section on EPA and the regulated industry. Retail businesses that both cook and sell cooked food (restaurants) are exempt from this section and all air conditioning units that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process are exempt from registration regardless of whether they are subject to Title VI. EPA believes that most of these sources would be *de minimis* and that the burden of registering these sources outweighs the benefits of the information we would gain, and therefore, EPA is revising the exemption list.

The final rule also is revised to exempt part 71 sources from some of the provisions of this section. Part 71 sources are only required to annually report their actual emissions. To reduce the sources' reporting burden, this annual report is to be submitted at the same time as the part 71 source's annual emission report and fee calculation worksheet as required by part 71 or by the source's part 71 permit.

The final rule also is revised to clarify the information that must be submitted with the initial and annual registration as well as the information that must be submitted along with any report of relocation or change of ownership. The final rule also clarifies the pollutants for which emissions information must be submitted. This list of pollutants is consistent with those required to be addressed in implementation plans and to be reported in accordance with the new emissions inventory reporting requirements at 40 CFR part 51, subpart A.

Section 49.139—Rule for non-Title V operating permits. This section creates a permitting program that can be used to establish Federally-enforceable requirements for air pollution sources on Indian reservations. This section applies in the following three situations: (1) The owner or operator of any source wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit and submits an application to the Regional Administrator requesting such a limitation; (2) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure compliance with the FIP or, if applicable, TIP; or (3) the Regional Administrator determines that additional Federally-enforceable requirements for a source are necessary to ensure the attainment and maintenance of any NAAQS or PSD increment. In these three situations, the Regional Administrator may write the operating permit, following the consultation and public comment procedures described in this section.

Also note that under this provision, a source that would require a part 71 Federal operating permit only because it is currently a major stationary source may obtain an operating permit under this section that limits its potential to emit to below major source thresholds so that the source is not subject to part 71.

The final rule is revised to clarify that the public will have an opportunity to request a public hearing on any draft permit. If EPA decides to hold a public hearing, we will look to the procedures in 40 CFR parts 124 and 71 for guidance.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or Tribal, State, or local governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this final rule is a ''significant regulatory action'' because it may raise novel legal or policy issues. This marks the first time that, under the CAA, EPA has promulgated FIPs for specific reservations that would be generally applicable to all sources within the exterior boundaries of those reservations.

However, EPA's analysis indicates that this rulemaking will not have a significant economic impact. EPA is finding that many sources on Indian reservations have historically been following similar air programs that are established by State and local agencies acting under State law or local rules. Although EPA has not approved SIPs as extending into Indian country under the CAA, nevertheless, some sources located on Indian reservations have made efforts to follow those programs. Most industrial sources on the Region 10 reservations have installed or upgraded air pollution control equipment to conform with State or local air programs without challenging the authority of those agencies within Indian country. As a result, these sources already have pollution controls that would meet State and local requirements.

As discussed above in sections I and II.A, this final rule will establish regulatory requirements for sources under the authority of the CAA that are substantially similar to the requirements of adjacent jurisdictions that most sources already meet. Thus, it is EPA's expectation that these rules will not impose significant costs or require significant changes at regulated sources. Nevertheless, because of the limited precedent this final rule would set, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section in Washington D.C. and at EPA Region 10 in Seattle, Washington. See the **ADDRESSES** section of this preamble for specific addresses and times when the docket may be reviewed.

B. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0558 (ICR No. 2020.02).

The FIPs in this final rule include information collection requirements associated with the fugitive particulate matter rule in § 49.126, the woodwaste burner rule in § 49.127; the rule for limiting sulfur in fuels in § 49.130; the rule for open burning in § 49.131; the rules for general open burning permits, agricultural burning permits, and forestry and silvicultural burning permits in §§ 49.132, 49.133, and 49.134; the registration rule in § 49.138; and the rule for non-Title V operating permits in § 49.139. EPA believes these information collection requirements are appropriate because they will enable EPA to develop and maintain accurate records of air pollution sources and their emissions, allow EPA to issue permits or approvals, and ensure appropriate records are available to verify compliance with these FIPs. The information collection requirements listed above are all mandatory, except for the voluntary requirements in § 49.131, § 49.132, § 49.133, § 49.134, and the owner-requested operating permits in § 49.139. Regulated entities can assert claims of business confidentiality and EPA would treat these claims in accordance with the provisions of 40 CFR part 2, subpart B.

The reporting and recordkeeping burden for this collection of information is described below. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA estimates that the owners or operators of facilities affected by this final rule will incur a total, for all affected facilities, of $114,803 in annualized labor costs and $17,475 in annualized non-labor costs to comply with the information collection requirements of this rule over the first three years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business as defined by the RFA (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. The economic analysis that EPA prepared for this rule shows the total annual compliance costs of the final rule to be approximately $1,500 per small business operating on the affected Indian reservations. The cost-to-sales ratio for small business entities is expected to be less than one percent for all facilities, even when the worst-case scenario is applied. EPA identified 114 small businesses and one small non-Tribal government that will be affected by this rule on the 39 reservations.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Where appropriate, EPA has included a number of exemptions in this rule to reduce impacts on small entities. Included are exemptions for sources considered sufficiently small, such as households or the owners of mobile sources. In addition, in order to better understand the implications of this rule on small entities operating on affected Indian reservations, EPA consulted extensively with Tribal governments regarding the potential impacts of this rule, as part of the consultations with Tribal representatives (see section F below).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on Tribal, State, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to Tribal, State, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for Tribal, State, and local governments, in the aggregate, or the private sector in any one year. With regard to State and local governments, there is no expenditure because these rules only apply on Indian reservations. With regard to Tribal governments, there is no expenditure to implement and enforce the rule because the rule provides that EPA will administer the program unless a Tribe chooses to assist EPA. In such a case, EPA will seek to provide funding to support these efforts. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

In developing this rule, EPA consulted with small governments pursuant to its interim plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rules that might significantly or uniquely affect small governments. As explained in the discussion of Executive Order 13175 in section F below, among other things, we notified all potentially affected Tribal governments of the requirements in this rule. Further, although there are no significant Federal intergovernmental mandates, we provided officials of all potentially affected Tribal governments an opportunity for meaningful and timely input in the development of the regulatory proposals. Finally, through consultation meetings and other forums, we will continue to keep Tribal governments involved by providing them with opportunities for learning about and receiving advice on compliance with the regulatory requirements.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that had Federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These rules only prescribe regulations for facilities in areas where a State does not administer an approved CAA program, and thus does not have any direct effect on any State. Moreover, it does not alter the relationship or the distribution of power

and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this final rule.

EPA provided advance copies of the draft proposed rule to State and local authorities in Idaho, Oregon, and Washington. All three States and several local air agencies wrote comment letters in support of the rule. Generally, the States are pleased that EPA is developing a rule for Indian reservations, as the rule will create more parity in the regulatory environment between on-reservation and off-reservation lands. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited input on this rule from State and local officials well in advance of publishing the proposed rule, and we also received many comments from State and local agencies during the public comment period that we considered in developing the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has Tribal implications and that preempts Tribal law, unless the Agency consults with Tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this final rule will have Tribal implications. These regulations would significantly affect specific Indian reservation communities by filling the gap in air quality regulations and thus creating a level of air quality protection not previously provided under the CAA. However, the air quality requirements promulgated here are applicable broadly to all sources within the identified Indian reservation areas, and are not uniquely applicable to Tribal governments. The gap-filling approach used in this rule would create Federal requirements similar to those that are already in place in jurisdictions adjacent to the reservations covered by the proposal. Tribal governments may incur some compliance costs in meeting those requirements that apply to sources they own or operate; however, the economic impacts analysis does not indicate that those costs will be significant. Finally, although Tribal governments are encouraged to partner with EPA on the implementation of these regulations, they are not required to do so. EPA will seek to provide funding to Tribes that apply for partial delegation of administrative authority to administer specific provisions to support their activities. Since this final rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA consulted with Tribal officials and representatives of Tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The concept for this final rule grew from discussions related to implementation of the CAA and the TAR with Tribes throughout Region 10 who are engaged in developing Tribal air quality programs. EPA Region 10 began assembling an inventory of air pollution sources in 1995, and EPA has been working with Tribes and other air management agencies since then to better determine the need for specific rules and to evaluate alternatives for Tribal and Federal programs.

In 1999 and 2000, EPA consulted with interested Tribal leaders, managers, technical staff, and attorneys to obtain their views and input on the development of the proposed rule. The Administrative Requirements section of the **Federal Register** notice for the proposed rule (67 FR 11748) contains a summary of the early consultation process, and the Consultation Record in the docket provides detailed information on the consultations. Based on these discussions and the inventory of air pollution sources, EPA proposed, and promulgates today, a rule that is tailored to the air quality issues of the reservations in Idaho, Oregon, and Washington.

The proposed rule was published on March, 15, 2002. EPA received written comments from seven of the 42 Tribes in Idaho, Oregon, and Washington. Following publication of the proposed rule and review of all comments received, EPA offered Tribes consultation on the rule. In September, October, and November of 2003, EPA met with a number of Tribes. The purpose of these meetings was to discuss a range of options EPA was considering as a result of the public comment received on the proposed rule and to obtain Tribal views and input on these options. EPA also held three conference calls with Tribes to discuss these options and sent three letters to the Tribal governments of all Tribes in Idaho, Oregon, and Washington to inform them of the opportunities to consult. In total, approximately 22 Tribes participated in these consultation opportunities. Please see the Consultation Record in the docket for this rule for more detailed information on the consultations.

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the Consultation Record.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this rule is not likely to have any adverse energy effects, because most of the facilities affected already have the pollution controls in place to enable them to comply with these rules.

I. NTTAA National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of NTTAA, Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

This final rule includes a number of voluntary consensus standards developed or adopted by ASTM International, which are listed below in § 49.123(e) for incorporation by reference. In response to a comment on the proposed rule by ASTM International, the final rule includes the latest update for each standard and method. This final rule also includes a number of generally accepted test methods previously promulgated by EPA in other Federal rulemakings. We have not created any new EPA standards or test methods for use in this rule.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 7, 2005.

K. Executive Order 12898: Environmental Justice Strategy

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' (59 FR 7629, February 19, 1994) requires each Federal agency to address and identify ''disproportionally high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income population'' (section 1.1).

This rule is designed to protect human health and air quality resources on Indian reservations in Idaho, Oregon, and Washington. Although there are non-Indians living and/or working on some of the reservations, the populations primarily affected by these rules are minorities, because most people living on the majority of affected reservations are American Indians. These reservations tend to have very low per capita incomes relative to the U.S. average, with a large percentage of the population below the poverty line. Therefore, the people living where this rule applies tend to be low income, as well as a minority. This final rule will not impose any negative environmental impacts on the people on the affected reservations. Therefore, there is no environmental justice concern in this case because this rule will improve human health and environmental conditions of a disadvantaged population in Region 10.

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 49

Environmental protection, Air pollution control, Administrative practice and procedure, Incorporation by reference, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 25, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons set out in the preamble, Parts 9 and 49, title 40, chapter I of the Code of Federal Regulations are amended to read as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by removing the heading ''Indian Tribes: Air Quality Planning and Management'' and adding in its place the heading ''Tribal Clean Air Act Authority'' and by adding the following entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Tribal Clean Air Act Authority	
* * * * *	
49.126(e)(1)(i)	2060–0558
49.126(e)(1)(iii)	2060–0558
49.126(e)(1)(v)	2060–0558
49.127(e)	2060–0558
49.130(f)(1)–(2)	2060–0558
49.131(c)(4)–(5)	2060–0558
49.132(d)(1)	2060–0558
49.132(e)(1)	2060–0558
49.133(c)(1)	2060–0558
49.133(d)(1)	2060–0558
49.134(c)(1)	2060–0558
49.134(d)(1)	2060–0558
49.138(d)–(f)	2060–0558
49.139(c)(1)	2060–0558
49.139(d)	2060–0558

40 CFR citation	OMB control No.
49.139(e)(2)	2060–0558
* * * * *	

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

■ 3. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 4. Part 49 is amended by adding subpart C to read as follows:

Subpart C—General Federal Implementation Plan Provisions

Sec.
49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

49.121 Introduction.
49.122 Partial delegation of administrative authority to a Tribe.
49.123 General provisions.
49.124 Rule for limiting visible emissions.
49.125 Rule for limiting the emissions of particulate matter.
49.126 Rule for limiting fugitive particulate matter emissions.
49.127 Rule for woodwaste burners.
49.128 Rule for limiting particulate matter emissions from wood products industry sources.
49.129 Rule for limiting emissions of sulfur dioxide.
49.130 Rule for limiting sulfur in fuels.
49.131 General rule for open burning.
49.132 Rule for general open burning permits.
49.133 Rule for agricultural burning permits.
49.134 Rule for forestry and silvicultural burning permits.
49.135 Rule for emissions detrimental to public health or welfare.
49.136 [Reserved]
49.137 Rule for air pollution episodes.
49.138 Rule for the registration of air pollution sources and the reporting of emissions.
49.139 Rule for non-Title V operating permits.
49.140–49.200 [Reserved]

Subpart C—General Federal Implementation Plan Provisions

§§ 49.101–49.120 [Reserved]

General Rules for Application to Indian Reservations in EPA Region 10

§ 49.121 Introduction.

(a) *What is the purpose of the ''General Rules for Application to Indian Reservations in EPA Region 10''?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these ''General Rules for Application to Indian Reservations in EPA Region 10'' developed?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' were developed in consultation with the Indian Tribes located in Idaho, Oregon, and Washington and with input from the public and State and local governments in Region 10. These general rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these ''General Rules for Application to Indian Reservations in EPA Region 10'' applicable to sources on a particular Indian reservation?* These ''General Rules for Application to Indian Reservations in EPA Region 10'' apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules for that reservation. Rules will be promulgated through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this part. These ''General Rules for Application to Indian Reservations in EPA Region 10'' apply only to air pollution sources located within the exterior boundaries of an Indian reservation or other reservation lands specified in subpart M of this part.

§ 49.122 Partial delegation of administrative authority to a Tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to an Indian Tribe partial authority to administer one or more of the Federal requirements in effect in subpart M of this part for a particular Indian reservation. The Federal requirements administered by the delegated Tribe will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request partial delegation of administrative authority?* In order to be delegated authority to administer one or more of the Federal requirements that are in effect in subpart M of this part for a particular Indian reservation, the Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that it meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested.

(c) *How is the partial delegation of administrative authority accomplished?*

(1) A Partial Delegation of Administrative Authority Agreement will set forth the terms and conditions of the delegation, will specify the provisions that the Tribe will be authorized to administer on behalf of EPA, and will be entered into by the Regional Administrator and the Tribe. The Agreement will become effective upon the date that both the Regional Administrator and the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Clean Air Act, to the extent specified in the Agreement, for administering one or more of the Federal requirements that are in effect in subpart M of this part for the particular Indian reservation and will act on behalf of the Regional Administrator.

(2) A Partial Delegation of Administrative Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe. Any substantive modifications or amendments will be subject to the procedures in paragraph (d) of this section.

(d) *How will any partial delegation of administrative authority be publicized?*

(1) Prior to making any final decision to delegate partial administrative authority to a Tribe under this section, EPA will consult with appropriate

governmental entities outside of the specified reservation and city and county governments located within the boundaries of the specified reservation.

(2) The Regional Administrator will publish a notice in the **Federal Register** informing the public of any Partial Delegation of Administrative Authority Agreement for a particular Indian reservation and will note such delegation in the implementation plan for the Indian reservation. The Regional Administrator will also publish an announcement of the partial delegation agreement in local newspapers.

§ 49.123 General provisions.

(a) *Definitions.* The following definitions apply for the purposes of the ''General Rules for Application to Indian Reservations in EPA Region 10.'' Terms not defined herein have the meaning given to them in the Act.

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

Actual emissions means the actual rate of emissions, in tons per year, of an air pollutant emitted from an air pollution source. For an existing air pollution source, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that did not operate during the preceding calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or an authorized representative of the Administrator.

Agricultural activities means the usual and customary activities of cultivating the soil, producing crops, and raising livestock for use and consumption. Agricultural activities do not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.

Agricultural burning means burning of vegetative debris from an agricultural activity that is necessary for disease or pest control, or for crop propagation and/or crop rotation.

Air pollutant means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

Air pollution source (*or source*) means any building, structure, facility, installation, activity, or equipment, or combination of these, that emits, or may emit, an air pollutant.

Allowable emissions means the emission rate of an air pollution source calculated using the maximum rated capacity of the source (unless the source is subject to Federally-enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

(1) The applicable standards in 40 CFR parts 60, 61, 62, and 63;

(2) The applicable implementation plan emission limitations, including those with a future compliance date; or

(3) The emissions rates specified in Federally-enforceable permit conditions.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access.

British thermal unit (*Btu*) means the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

Coal means all fuels classified as anthracite, bituminous, sub-bituminous, or lignite by ASTM International in ASTM D388–99 (Reapproved 2004)ε^1, Standard Classification of Coals by Rank (incorporated by reference, see § 49.123(e)).

Combustion source means any air pollution source that combusts a solid fuel, liquid fuel, or gaseous fuel, or an incinerator.

Continuous emissions monitoring system (CEMS) means the total equipment used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous opacity monitoring system (COMS) means the total equipment used to sample, analyze, and provide a permanent record of opacity.

Distillate fuel oil means any oil meeting the specifications of ASTM Grade 1 or Grade 2 fuel oils in ASTM Method D396–04, Standard Specification for Fuel Oils (incorporated by reference, see § 49.123(e)).

Emission means a direct or indirect release into the atmosphere of any air pollutant, or air pollutants released into the atmosphere.

Emission factor means an estimate of the amount of an air pollutant that is released into the atmosphere, as the result of an activity, in terms of mass of emissions per unit of activity (for example, the pounds of sulfur dioxide emitted per gallon of fuel burned).

Emission unit means any part of an air pollution source that emits, or may emit, air pollutants into the atmosphere.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator.

Forestry or silvicultural activities means those activities associated with regeneration, growing, and harvesting of trees and timber including, but not limited to, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, fertilization, logging operations, and forest management techniques employed to enhance the growth of stands of trees or timber.

Forestry or silvicultural burning means burning of vegetative debris from a forestry or silvicultural activity that is necessary for disease or pest control, reduction of fire hazard, reforestation, or ecosystem management.

Fuel means any solid, liquid, or gaseous material that is combusted in order to produce heat or energy.

Fuel oil means a liquid fuel derived from crude oil or petroleum, including distillate oil, residual oil, and used oil.

Fugitive dust means a particulate matter emission made airborne by forces of wind, mechanical disturbance of surfaces, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust.

Fugitive particulate matter means particulate matter emissions that do not pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive particulate matter includes fugitive dust.

Garbage means food wastes.

Gaseous fuel means any fuel that exists in a gaseous state at standard conditions including, but not limited to, natural gas, propane, fuel gas, process gas, and landfill gas.

Grate cleaning means removing ash from fireboxes.

Hardboard means a flat panel made from wood that has been reduced to basic wood fibers and bonded by adhesive properties under pressure.

Heat input means the total gross calorific value [where gross calorific value is measured by ASTM Method D240–02, D1826–94(Reapproved 2003), D5865–04, or E711–87(Reapproved 2004) (incorporated by reference, see § 49.123(e))] of all fuels burned.

Implementation plan means a Tribal implementation plan approved by EPA pursuant to this part or 40 CFR part 51, or a Federal implementation plan promulgated by EPA in this part or in 40 CFR part 52 that applies in Indian

country, or a combination of Tribal and Federal implementation plans.

Incinerator means any device, including a flare, designed to reduce the volume of solid, liquid, or gaseous waste by combustion. This includes air curtain incinerators, but does not include open burning.

Indian country means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Marine vessel means a waterborne craft, ship, or barge.

Mobile sources means locomotives, aircraft, motor vehicles, nonroad vehicles, nonroad engines, and marine vessels.

Motor vehicle means any self-propelled vehicle designed for transporting people or property on a street or highway.

New air pollution source means an air pollution source that begins actual construction after the effective date of the ''General Rules for Application to Indian Reservations in EPA Region 10''.

Noncombustibles means materials that are not flammable, capable of catching fire, or burning.

Nonroad engine means:

(1) Except as discussed below, any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or that serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes, and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(2) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Act; or

(ii) The engine is regulated by a Federal new source performance standard promulgated under section 111 of the Act; or

(iii) The engine that is otherwise portable or transportable remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. For purposes of this paragraph, a seasonal source is a stationary source that remains in a single location on a permanent basis (*i.e.*, at least 2 years) and that operates at that single location approximately 3 months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

Nonroad vehicle means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

Oil-fired boiler means a furnace or boiler used for combusting fuel oil for the primary purpose of producing steam or hot water by heat transfer.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Open burning means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

Owner or operator means any person who owns, leases, operates, controls, or supervises an air pollution source.

Part 71 source means any source subject to the permitting requirements of 40 CFR part 71, as provided in §§ 71.3(a) and 71.3(b).

Particleboard means a matformed flat panel consisting of wood particles bonded together with synthetic resin or other suitable binder.

Particulate matter means any airborne finely divided solid or liquid material, other than uncombined water. Particulate matter includes, but is not limited to, PM10 and PM2.5.

Permit to construct or construction permit means a permit issued by the Regional Administrator pursuant to 40 CFR part 49 or 40 CFR part 52, or a permit issued by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51, subpart I, authorizing the construction or modification of a stationary source.

Permit to operate or operating permit means a permit issued by the Regional Administrator pursuant to § 49.139 or 40 CFR part 71, or by a Tribe pursuant to a program approved by the Administrator under 40 CFR part 51 or 40 CFR part 70, authorizing the operation of a stationary source.

Plywood means a flat panel built generally of an odd number of thin sheets of veneers of wood in which the grain direction of each ply or layer is at right angles to the one adjacent to it.

PM10 means particulate matter with an aerodynamic diameter less than or equal to 10 micrometers.

PM2.5 means particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers.

Potential to emit means the maximum capacity of an air pollution source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the air pollution source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable.

Press/Cooling vent means any opening through which particulate and gaseous emissions from plywood, particleboard, or hardboard manufacturing are exhausted, either by natural draft or powered fan, from the building housing the process. Such openings are generally located immediately above the board press, board unloader, or board cooling area.

Process source means an air pollution source using a procedure or combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

Rated capacity means the maximum sustainable capacity of the equipment.

Reference method means any method of sampling and analyzing for an air pollutant as specified in the applicable section.

Refuse means all solid, liquid, or gaseous waste material, including but not limited to, garbage, trash, household

refuse, municipal solid waste, construction or demolition debris, or waste resulting from the operation of any business, trade, or industry.

Regional Administrator means the Regional Administrator of EPA Region 10 or an authorized representative of the Regional Administrator.

Residual fuel oil means any oil meeting the specifications of ASTM Grade 4, Grade 5, or Grade 6 fuel oils in ASTM Method D396–04, Standard Specification for Fuel Oils (incorporated by reference, see § 49.123(e)).

Smudge pot means a portable heater/burner that produces thick heavy smoke and that fruit growers place around an orchard in the evening to prevent the crop from freezing at night.

Solid fuel means wood, refuse, refuse-derived fuel, tires, tire-derived fuel, and other solid combustible material (other than coal), including any combination thereof.

Solid fuel-fired boiler means a furnace or boiler used for combusting solid fuel for the primary purpose of producing steam or hot water by heat transfer.

Soot blowing means using steam or compressed air to remove carbon from a furnace or from a boiler's heat transfer surfaces.

Source means the same as *air pollution source.*

Stack means any point in a source that conducts air pollutants to the atmosphere, including, but not limited to, a chimney, flue, conduit, pipe, vent, or duct, but not including a flare.

Standard conditions means a temperature of 293 degrees Kelvin (68 degrees Fahrenheit, 20 degrees Celsius) and a pressure of 101.3 kilopascals (29.92 inches of mercury).

Start-up means the setting into operation of a piece of equipment.

Stationary source means any building, structure, facility, or installation that emits, or may emit, any air pollutant.

Tempering oven means any facility used to bake hardboard following an oil treatment process.

Uncombined water means droplets of water that have not combined with hygroscopic particles or do not contain dissolved solids.

Used oil means petroleum products that have been recovered from another application.

Veneer means a single flat panel of wood not exceeding ¼ inch in thickness formed by slicing or peeling from a log.

Veneer dryer means equipment in which veneer is dried.

Visible emissions means air pollutants in sufficient amount to be observable to the human eye.

Wood means wood, wood residue, bark, or any derivative or residue thereof, in any form, including but not limited to sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

Wood-fired boiler means a furnace or boiler used for combusting wood for the primary purpose of producing steam or hot water by heat transfer.

Wood-fired veneer dryer means a veneer dryer that is directly heated by the products of combustion of wood in addition to, or exclusive of, steam or natural gas or propane combustion.

Woodwaste burner means a wigwam burner, teepee burner, silo burner, olivine burner, truncated cone burner, or other such woodwaste-burning device used by the wood products industry for the disposal of wood wastes.

(b) *Requirement for testing.* The Regional Administrator may require, in a permit to construct or a permit to operate, that a person demonstrate compliance with the ''General Rules for Application to Indian Reservations in EPA Region 10'' by performing a source test and submitting the test results to the Regional Administrator. A person may also be required by the Regional Administrator, in a permit to construct or permit to operate, to install and operate a continuous opacity monitoring system (COMS) or a continuous emissions monitoring system (CEMS) to demonstrate compliance. Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' limits the authority of the Regional Administrator to require, in an information request pursuant to section 114 of the Act, a person to demonstrate compliance by performing source testing, even where the source does not have a permit to construct or a permit to operate.

(c) *Requirement for monitoring, recordkeeping, and reporting.* Nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' precludes the Regional Administrator from requiring monitoring, recordkeeping, and reporting, including monitoring, recordkeeping, and reporting in addition to that already required by an applicable requirement, in a permit to construct or permit to operate in order to ensure compliance.

(d) *Credible evidence.* For the purposes of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any requirement, nothing in the ''General Rules for Application to Indian Reservations in EPA Region 10'' precludes the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed.

(e) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, or are available for inspection at EPA's Air and Radiation Docket and Information Center, located at 1301 Constitution Avenue, NW, Room B102, Mail Code 6102T, Washington, D.C. 20004, at EPA Region 10, Office of Air, Waste, and Toxics, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) The materials listed below are available for purchase from at least one of the following addresses: ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(i) ASTM D388–99(Reapproved 2004)€¹, Standard Classification of Coals by Rank, Incorporation by reference (IBR) approved for § 49.123(a).

(ii) ASTM D396–04, Standard Specification for Fuel Oils, IBR approved for § 49.123(a).

(iii) ASTM D240–02, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for § 49.123(a).

(iv) ASTM D1826–94(Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for § 49.123(a).

(v) ASTM D5865–04, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 49.123(a).

(vi) ASTM E711–87(Reapproved 2004) Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter, IBR approved for § 49.123(a).

(vii) ASTM D2880–03, Standard Specification for Gas Turbine Fuel Oils, IBR approved for § 49.130(e)(1).

(viii) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectroscopy, IBR approved for § 49.130(e)(1).

(ix) ASTM D6021–96(Reapproved 2001)€1, Standard Test Method for Measurement of Total Hydrogen Sulfide in Residual Fuels by Multiple Headspace Extraction and Sulfur Specific Detection, IBR approved for § 49.130(e)(1).

(x) ASTM D3177–02, Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for § 49.130(e)(2).

(xi) ASTM D4239–04a, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for § 49.130(e)(2).

(xii) ASTM D2492–02, Standard Test Method for Forms of Sulfur in Coal, IBR approved for § 49.130(e)(2).

(xiii) ASTM E775–87(Reapproved 2004), Standard Test Methods for Total Sulfur in the Analysis Sample of Refuse-Derived Fuel, IBR approved for § 49.130(e)(3).

(xiv) ASTM D1072–90(Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 49.130(e)(4).

(xv) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 49.130(e)(4).

(xvi) ASTM D4084–94(Reapproved 1999) Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 49.130(e)(4).

(xvii) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 49.130(e)(4).

(xviii) ASTM D4468–85(Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 49.130(e)(4).

(xix) ASTM D2622–03, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry, IBR approved for § 49.130(e)(4).

(xx) ASTM D6228–98(Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 49.130(e)(4).

§ 49.124 Rule for limiting visible emissions.

(a) *What is the purpose of this section?* This section limits the visible emissions of air pollutants from certain air pollution sources operating within the Indian reservation to control emissions of particulate matter to the atmosphere and ground-level concentrations of particulate matter, to detect the violation of other requirements in the ''General Rules for Application to Indian Reservations in EPA Region 10'', and to indicate whether a source is continuously maintained and properly operated.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter or other visible air pollutants to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, non-commercial smoke houses, sweat houses or lodges, smudge pots, furnaces and boilers used exclusively to heat residential buildings with four or fewer dwelling units, fugitive dust from public roads owned or maintained by any Federal, Tribal, State, or local government, and emissions from fuel combustion in mobile sources.

(d) *What are the opacity limits for air pollution sources?*

(1) The visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (d)(3) of this section applies to the air pollution source.

(2) The visible emissions from an air pollution source may exceed the 20% opacity limit if the owner or operator of the air pollution source demonstrates to the Regional Administrator's satisfaction that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet the 20% opacity limit.

(3) The visible emissions from an oil-fired boiler or solid fuel-fired boiler that continuously measures opacity with a continuous opacity monitoring system (COMS) may exceed the 20% opacity limit during start-up, soot blowing, and grate cleaning for a single period of up to 15 consecutive minutes in any eight consecutive hours, but must not exceed 60% opacity at any time.

(e) *What is the reference method for determining compliance?*

(1) The reference method for determining compliance with the opacity limits is EPA Method 9. A complete description of this method is found in appendix A of 40 CFR part 60.

(2) An alternative reference method for determining compliance is a COMS that complies with Performance Specification 1 found in appendix B of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section, are defined in § 49.123 General provisions: Act, agricultural activities, air pollutant, air pollution source, ambient air, coal, continuous opacity monitoring system (COMS), distillate fuel oil, emission, forestry or silvicultural activities, fuel, fuel oil, fugitive dust, gaseous fuel, grate cleaning, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, oil-fired boiler, opacity, open burning, particulate matter, PM10, PM2.5, reference method, refuse, Regional Administrator, residual fuel oil, smudge pot, solid fuel, solid fuel-fired boiler, soot blowing, stack, standard conditions, start-up, stationary source, uncombined water, used oil, visible emissions, and wood.

§ 49.125 Rule for limiting the emissions of particulate matter.

(a) *What is the purpose of this section?* This section limits the amount of particulate matter that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, particulate matter to the atmosphere, unless exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* This section does not apply to woodwaste burners, furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, non-commercial smoke houses, sweat houses or lodges, open burning, and mobile sources.

(d) *What are the particulate matter limits for air pollution sources?*

(1) Particulate matter emissions from a combustion source stack (except for wood-fired boilers) must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period.

(2) Particulate matter emissions from a wood-fired boiler stack must not exceed an average of 0.46 grams per dry

standard cubic meter (0.2 grains per dry standard cubic foot), corrected to seven percent oxygen, during any three-hour period.

(3) Particulate matter emissions from a process source stack, or any other stack not subject to paragraph (d)(1) or (d)(2) of this section, must not exceed an average of 0.23 grams per dry standard cubic meter (0.1 grains per dry standard cubic foot) during any three-hour period.

(e) *What is the reference method for determining compliance?* The reference method for determining compliance with the particulate matter limits is EPA Method 5. A complete description of this method is found in appendix A of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, open burning, particulate matter, PM10, PM2.5, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, uncombined water, used oil, wood, wood-fired boiler, and woodwaste burner.

§ 49.126 Rule for limiting fugitive particulate matter emissions.

(a) *What is the purpose of this section?* This section limits the amount of fugitive particulate matter that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a source of fugitive particulate matter emissions.

(c) *What is exempted from this section?* This section does not apply to open burning, agricultural activities, forestry and silvicultural activities, sweat houses or lodges, non-commercial smoke houses, public roads owned or maintained by any Federal, Tribal, State, or local government, or activities associated with single-family residences or residential buildings with four or fewer dwelling units.

(d) *What are the requirements for sources of fugitive particulate matter emissions?*

(1) The owner or operator of any source of fugitive particulate matter emissions, including any source or activity engaged in materials handling or storage, construction, demolition, or any other operation that is or may be a source of fugitive particulate matter emissions, must take all reasonable precautions to prevent fugitive particulate matter emissions and must maintain and operate the source to minimize fugitive particulate matter emissions.

(2) Reasonable precautions include, but are not limited to the following:

(i) Use, where possible, of water or chemicals for control of dust in the demolition of buildings or structures, construction operations, grading of roads, or clearing of land.

(ii) Application of asphalt, oil (but not used oil), water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces that can create airborne dust.

(iii) Full or partial enclosure of materials stockpiles in cases where application of oil, water, or chemicals is not sufficient or appropriate to prevent particulate matter from becoming airborne.

(iv) Implementation of good housekeeping practices to avoid or minimize the accumulation of dusty materials that have the potential to become airborne, and the prompt cleanup of spilled or accumulated materials.

(v) Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials.

(vi) Adequate containment during sandblasting or other similar operations.

(vii) Covering, at all times when in motion, open bodied trucks transporting materials likely to become airborne.

(viii) The prompt removal from paved streets of earth or other material that does or may become airborne.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this section must:

(i) Annually survey the air pollution source(s) during typical operating conditions and meteorological conditions conducive to producing fugitive dust to determine the sources of fugitive particulate matter emissions. For new sources or new operations, a survey must be conducted within 30 days after commencing operation. Document the results of the survey, including the date and time of the survey and identification of any sources of fugitive particulate matter emissions found.

(ii) If sources of fugitive particulate matter emissions are present, determine the reasonable precautions that will be taken to prevent fugitive particulate matter emissions.

(iii) Prepare, and update as necessary following each survey, a written plan that specifies the reasonable precautions that will be taken and the procedures to be followed to prevent fugitive particulate matter emissions, including appropriate monitoring and recordkeeping. For construction or demolition activities, a written plan must be prepared prior to commencing construction or demolition.

(iv) Implement the written plan, and maintain and operate the source to minimize fugitive particulate matter emissions.

(v) Maintain records for five years that document the surveys and the reasonable precautions that were taken to prevent fugitive particulate matter emissions.

(2) The Regional Administrator may require specific actions to prevent fugitive particulate matter emissions, or impose conditions to maintain and operate the air pollution source to minimize fugitive particulate matter emissions, in a permit to construct or a permit to operate for the source.

(3) Efforts to comply with this section cannot be used as a reason for not complying with other applicable laws and ordinances.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Agricultural activities, air pollutant, air pollution source, ambient air, emission, forestry or silvicultural activities, fugitive dust, fugitive particulate matter, owner or operator, particulate matter, permit to construct, permit to operate, PM10, PM2.5, Regional Administrator, source, stack, and uncombined water.

§ 49.127 Rule for woodwaste burners.

(a) *What is the purpose of this section?* This section phases out the operation of woodwaste burners (commonly known as wigwam or teepee burners), and in the interim, limits the visible emissions from woodwaste burners within the Indian reservation to control emissions of particulate matter to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a woodwaste burner.

(c) *What are the requirements for woodwaste burners?*

(1) Except as provided by paragraph (c)(3) of this section, the owner or operator of a woodwaste burner must shut down and dismantle the woodwaste burner by no later than two years after the effective date of this section. The requirement for dismantling applies to all woodwaste

burners regardless of whether or not the woodwaste burners are currently operational. Until the woodwaste burner is shut down, visible emissions from the woodwaste burner must not exceed 20% opacity, averaged over any consecutive six-minute period.

(2) Until the woodwaste burner is shut down, only wood waste generated on-site may be burned or disposed of in the woodwaste burner.

(3) If there is no reasonably available alternative method of disposal for the wood waste other than by burning it on-site in a woodwaste burner, the owner or operator of the woodwaste burner that is in compliance with the opacity limit in paragraph (c)(1) of this section, may apply to the Regional Administrator for an extension of the two-year deadline. If the Regional Administrator finds that there is no reasonably available alternative method of disposal, then a two-year extension of the deadline may be granted. There is no limit to the number of extensions that may be granted by the Regional Administrator.

(d) *What is the reference method for determining compliance with the opacity limit?*

(1) The reference method for determining compliance with the opacity limit is EPA Method 9. A complete description of this method is found in 40 CFR part 60, appendix A.

(2) [Reserved]

(e) *Are there additional requirements that must be met?* A person subject to this section must submit a plan to shut down and dismantle the woodwaste burner to the Regional Administrator within 180 days after the effective date of this section. Unless an extension has been granted by the Regional Administrator, the woodwaste burner must be shut down and dismantled within two years after the effective date of this section. The owner or operator of the woodwaste burner must notify the Regional Administrator that the woodwaste burner has been shut down and dismantled within 30 days after completion.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, opacity, owner or operator, particulate matter, PM10, PM2.5, reference method, Regional Administrator, stationary source, uncombined water, visible emissions, wood, and woodwaste burner.

§ 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(a) *What is the purpose of this section?* This section limits the amount of particulate matter that may be emitted from certain wood products industry sources operating within the Indian reservation to control ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who owns or operates any of the following wood products industry sources:

(1) Veneer manufacturing operations;

(2) Plywood manufacturing operations;

(3) Particleboard manufacturing operations; and

(4) Hardboard manufacturing operations.

(c) *What are the PM10 emission limits for wood products industry sources?* These PM10 limits are in addition to, and not in lieu of, the particulate matter limits for combustion sources and process sources.

(1) *Veneer dryers at veneer manufacturing operations and plywood manufacturing operations.*

(i) PM10 emissions from direct natural gas fired or direct propane fired veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(ii) PM10 emissions from steam heated veneer dryers must not exceed 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis), one-hour average.

(iii) PM10 emissions from wood fired veneer dryers must not exceed a total of 0.3 pounds per 1000 square feet of veneer dried (3/8 inch basis) and 0.2 pounds per 1000 pounds of steam generated in boilers, prorated for the amount of combustion gases routed to the veneer dryer, one-hour average.

(2) *Wood particle dryers at particleboard manufacturing operation.* PM10 emissions from wood particle dryers must not exceed a total of 0.4 pounds per 1000 square feet of board produced by the plant (3/4 inch basis), one-hour average.

(3) *Press/cooling vents at hardboard manufacturing operations.* PM10 emissions from hardboard press/cooling vents must not exceed 0.3 pounds per 1000 square feet of hardboard produced (1/8 inch basis), one-hour average.

(4) *Tempering ovens at hardboard manufacturing operations.* A person must not operate any hardboard tempering oven unless all gases and vapors are collected and treated in a fume incinerator capable of raising the temperature of the gases and vapors to at least 1500 degrees Fahrenheit for 0.3 seconds or longer.

(d) *What is the reference method for determining compliance?* The reference method for determining compliance with the PM10 limits is EPA Method 202 in conjunction with Method 201A. A complete description of these methods is found in appendix M of 40 CFR part 51.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, combustion source, emissions, hardboard, particleboard, particulate matter, plywood, PM10, PM2.5, press/cooling vent, process source, tempering oven, veneer, veneer dryer, wood, and wood-fired veneer dryer.

§ 49.129 Rule for limiting emissions of sulfur dioxide.

(a) *What is the purpose of this section?* This section limits the amount of sulfur dioxide (SO_2) that may be emitted from certain air pollution sources operating within the Indian reservation to control ground-level concentrations of SO_2.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source that emits, or could emit, SO_2 to the atmosphere.

(c) *What is exempted from this section?* This section does not apply to furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour, and mobile sources.

(d) *What are the sulfur dioxide limits for sources?*

(1) Sulfur dioxide emissions from a combustion source stack must not exceed an average of 500 parts per million by volume, on a dry basis and corrected to seven percent oxygen, during any three-hour period.

(2) Sulfur dioxide emissions from a process source stack, or any other stack not subject to (d)(1) of this section, must not exceed an average of 500 parts per million by volume, on a dry basis, during any three-hour period.

(e) *What are the reference methods for determining compliance?*

(1) The reference methods for determining compliance with the SO_2 limits are EPA Methods 6, 6A, 6B, and 6C as specified in the applicability section of each method. A complete description of these methods is found in appendix A of 40 CFR part 60.

(2) An alternative reference method is a continuous emissions monitoring system (CEMS) that complies with

Performance Specification 2 found in appendix B of 40 CFR part 60.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, air pollution source, ambient air, British thermal unit (Btu), coal, combustion source, continuous emissions monitoring system (CEMS), distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, heat input, incinerator, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, open burning, process source, reference method, refuse, residual fuel oil, solid fuel, stack, standard conditions, stationary source, used oil, wood, and woodwaste burner.

§ 49.130 Rule for limiting sulfur in fuels.

(a) *What is the purpose of this section?* This section limits the amount of sulfur contained in fuels that are burned at stationary sources within the Indian reservation to control emissions of sulfur dioxide (SO_2) to the atmosphere and ground-level concentrations of SO_2.

(b) *Who is affected by this section?* This section applies to any person who sells, distributes, uses, or makes available for use, any fuel oil, coal, solid fuel, liquid fuel, or gaseous fuel within the Indian reservation.

(c) *What is exempted from this section?* This section does not apply to gasoline and diesel fuel, such as automotive and marine diesel, regulated under 40 CFR part 80.

(d) *What are the sulfur limits for fuels?* A person must not sell, distribute, use, or make available for use any fuel oil, coal, solid fuel, liquid fuel, or gaseous fuel that contains more than the following amounts of sulfur:

(1) For distillate fuel oil, 0.3 percent by weight for ASTM Grade 1 fuel oil;

(2) For distillate fuel oil, 0.5 percent by weight for ASTM Grade 2 fuel oil;

(3) For residual fuel oil, 1.75 percent sulfur by weight for ASTM Grades 4, 5, or 6 fuel oil;

(4) For used oil, 2.0 percent sulfur by weight;

(5) For any liquid fuel not listed in paragraphs (d)(1) through (d)(4) of this section, 2.0 percent sulfur by weight;

(6) For coal, 1.0 percent sulfur by weight;

(7) For solid fuels, 2.0 percent sulfur by weight;

(8) For gaseous fuels, 1.1 grams of sulfur per dry standard cubic meter of gaseous fuel (400 parts per million at standard conditions).

(e) *What are the reference methods for determining compliance?* The reference methods for determining the amount of sulfur in a fuel are as follows:

(1) Sulfur content in fuel oil or liquid fuels: ASTM methods D2880–03, D4294–03, and D6021–96 (Reapproved 2001)ϵ^1 (incorporated by reference, see § 49.123(e));

(2) Sulfur content in coal: ASTM methods D3177–02, D4239–04a, and D2492–02 (incorporated by reference, see § 49.123(e));

(3) Sulfur content in solid fuels: ASTM method E775–87ϵ^1 (Reapproved 2004) (incorporated by reference, see § 49.123(e));

(4) Sulfur content in gaseous fuels: ASTM methods D1072–90(Reapproved 1999), D3246–96, D4084–94ϵ^1 (Reapproved 1999), D5504–01, D4468–85ϵ^1 (Reapproved 2000), D2622–03, and D6228–98ϵ^1 (Reapproved 2003) (incorporated by reference, see § 49.123(e)).

(f) *Are there additional requirements that must be met?*

(1) A person subject to this section must:

(i) For fuel oils and liquid fuels, obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of fuel. If the vendor is unable to provide this information, then obtain a representative grab sample for each purchase and test the sample using the reference method.

(ii) For gaseous fuels, either obtain, record, and keep records of the sulfur content from the vendor, or continuously monitor the sulfur content of the fuel gas line using a method that meets the requirements of Performance Specification 5, 7, 9, or 15 (as applicable for the sulfur compounds in the gaseous fuel) of appendix B and appendix F of 40 CFR part 60. If only purchased natural gas is used, then keep records showing that the gaseous fuel meets the definition of natural gas in 40 CFR 72.2.

(iii) For coal and solid fuels, either obtain, record, and keep records of the percent sulfur by weight from the vendor for each purchase of coal or solid fuel, or obtain a representative grab sample for each day of operation and test the sample using the reference method. If only wood is used, then keep records showing that only wood was used. The owner or operator of a coal- or solid fuel-fired source may apply to the Regional Administrator for a waiver of thisprovision or for approval of an alternative fuel sampling program.

(2) Records of fuel purchases and fuel sulfur content must be kept for a period of five years from date of purchase and must be made available to the Regional Administrator upon request.

(3) The owner or occupant of a single-family residence, and the owner or manager of a residential building with four or fewer dwelling units, is not subject to the requirement to obtain and record the percent sulfur content from the vendor if the fuel used in an oil, coal, or gas furnace is purchased from a licensed fuel distributor.

(g) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, air pollutant, ambient air, coal, distillate fuel oil, emission, fuel, fuel oil, gaseous fuel, marine vessel, mobile sources, motor vehicle, nonroad engine, nonroad vehicle, owner or operator, reference method, refuse, Regional Administrator, residual fuel oil, solid fuel, source, standard conditions, stationary source, used oil, and wood.

§ 49.131 General rule for open burning.

(a) *What is the purpose of this section?* This section limits the types of materials that can be openly burned within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter. It is EPA's goal to eliminate open burning disposal practices where alternative methods are feasible and practicable, to encourage the development of alternative disposal methods, to emphasize resource recovery, and to encourage utilization of the highest and best practicable burning methods to minimize emissions where other disposal practices are not feasible.

(b) *Who is affected by this section?* This section applies to any person who conducts open burning and to the owner of the property upon which open burning is conducted.

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, fires set for recreational purposes provided that no prohibited materials are burned;

(4) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, open outdoor fires used by qualified personnel to train firefighters in the methods of fire suppression and fire fighting techniques, provided that training fires are not allowed to smolder after the training session has terminated. Prior to igniting any structure, the fire protection service must ensure that the structure does not contain any asbestos

or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes. Before requesting permission from the Regional Administrator, the fire protection service must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(5) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section and with prior permission from the Regional Administrator, one open outdoor fire each year to dispose of fireworks and associated packaging materials. Before requesting permission from the Regional Administrator, the owner or operator must notify any appropriate Tribal air pollution authority and obtain any permissions or approvals required by the Tribe, and by any other governments with applicable laws and ordinances;

(6) Except during a burn ban under paragraphs (d)(2) and (d)(3) of this section, open burning for the disposal of diseased animals or other material by order of a public health official.

(d) *What are the requirements for open burning?*

(1) A person must not openly burn, or allow the open burning of, the following materials:

(i) Garbage;

(ii) Dead animals or parts of dead animals;

(iii) Junked motor vehicles or any materials resulting from a salvage operation;

(iv) Tires or rubber materials or products;

(v) Plastics, plastic products, or styrofoam;

(vi) Asphalt or composition roofing, or any other asphaltic material or product;

(vii) Tar, tarpaper, petroleum products, or paints;

(viii) Paper, paper products, or cardboard other than what is necessary to start a fire or that is generated at single-family residences or residential buildings with four or fewer dwelling units and is burned at the residential site;

(ix) Lumber or timbers treated with preservatives;

(x) Construction debris or demolition waste;

(xi) Pesticides, herbicides, fertilizers, or other chemicals;

(xii) Insulated wire;

(xiii) Batteries;

(xiv) Light bulbs;

(xv) Materials containing mercury (e.g., thermometers);

(xvi) Asbestos or asbestos-containing materials;

(xvii) Pathogenic wastes;

(xviii) Hazardous wastes; or

(xix) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned.

(2) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator declares a burn ban due to deteriorating air quality. A burn ban may be declared whenever the Regional Administrator determines that air quality levels have exceeded, or are expected to exceed, 75% of any national ambient air quality standard for particulate matter, and these levels are projected to continue or reoccur over at least the next 24 hours.

(3) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency pursuant to § 49.137 Rule for air pollution episodes.

(4) Nothing in this section exempts or excuses any person from complying with applicable laws and ordinances of local fire departments and other governmental jurisdictions.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this section must conduct open burning as follows:

(i) All materials to be openly burned must be kept as dry as possible through the use of a cover or dry storage;

(ii) Before igniting a burn, noncombustibles must be separated from the materials to be openly burned to the greatest extent practicable;

(iii) Natural or artificially induced draft must be present, including the use of blowers or air curtain incinerators where practicable;

(iv) To the greatest extent practicable, materials to be openly burned must be separated from the grass or peat layer; and

(v) A fire must not be allowed to smolder.

(2) Except for exempted fires set for cultural or traditional purposes, a person must not initiate any open burning when:

(i) The Regional Administrator has declared a burn ban;

(ii) An air stagnation advisory has been issued or an air pollution alert, warning, or emergency has been declared by the Regional Administrator.

(3) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.132 Rule for general open burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for open burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who conducts open burning.

(c) *What is exempted from this section?* The following open fires are exempted from this section:

(1) Outdoor fires set for cultural or traditional purposes;

(2) Fires set for cultural or traditional purposes within structures such as sweat houses or lodges;

(3) Fires set for recreational purposes, provided that no prohibited materials are burned;

(4) Forestry and silvicultural burning; and

(5) Agricultural burning.

(d) *What are the requirements for open burning?*

(1) A person must apply for and obtain a permit for the open burn, have the permit available on-site during the open burn, and conduct the open burning in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.

(3) A person must comply with the § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(4) Nothing in this section exempts or excuses any person from complying with any applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(e) *Are there additional requirements that must be met?*

(1) A person subject to this section must submit an application to the

Regional Administrator for each proposed open burn. An application must be submitted in writing at least one working day, and no earlier than five working days, prior to the requested date that the burn would be conducted, and must contain, at a minimum, the following information:

(i) Street address of the property upon that the proposed open burning will occur, or if there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed open burning.

(iii) A plot plan showing the location of the proposed open burning in relation to the property lines and indicating the distances and directions of the nearest residential and commercial properties.

(iv) The type and quantity of materials proposed to be burned, including the estimated volume of material to be burned and the area over which burning will be conducted.

(v) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water.

(vi) The requested date when the proposed open burning would be conducted and the duration of the burn if it is more than one day.

(vii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed open burning is consistent with this section and § 49.131 General rule for open burning, or the EPA-approved Tribal open burning rule, the Regional Administrator may issue a burn permit. The permit will authorize burning only for the requested date(s) and will include any conditions that the Regional Administrator determines are necessary to ensure compliance with this section, § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, and to protect the public health and welfare.

(3) When reviewing an application, the Regional Administrator will take into consideration relevant factors including, but not limited to, the size, duration, and location of the proposed open burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area. Where the Regional Administrator determines that the proposed open burning can be conducted without causing an adverse impact on air quality, a permit may be issued.

(4) The Regional Administrator, to the extent practical, will coordinate the issuance of open burning permits with the open burning permit programs of surrounding jurisdictions.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Agricultural burning, air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.133 Rule for agricultural burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for agricultural burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who conducts agricultural burning.

(c) *What are the requirements for agricultural burning?*

(1) A person must apply for a permit to conduct an agricultural burn, obtain approval of the permit on the day of the burn, have the permit available onsite during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain approval of a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.

(3) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(4) Nothing in this section exempts or excuses any person from complying with any applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this section must submit an application to the Regional Administrator for each proposed agricultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed agricultural burning will occur or, if there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the applicant and the person who will be responsible for conducting the proposed agricultural burning.

(iii) A plot plan showing the location of each proposed agricultural burning area in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, roads, and other areas that could be impacted by the burning.

(iv) The type and quantity of agricultural wastes proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile or stack burn, open field or broadcast burn, windrow burn, mobile field sanitizer, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and plowed firebreaks.

(vii) The requested date(s) when the proposed agricultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed agricultural burning is consistent with this section and § 49.131 General rule for open burning, or the EPA-approved Tribal open burning rule, the Regional Administrator may approve the agricultural burning permit and authorize burning on the day burning is to be conducted after taking into consideration relevant factors including, but not limited to:

(i) The size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area; and

(ii) Other factors indicating whether or not the proposed agricultural burning can be conducted without causing an adverse impact on air quality.

(3) The Regional Administrator, to the extent practical, will consult with and coordinate approvals to burn with the open burning programs of surrounding jurisdictions.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Agricultural burning or agricultural burn, air pollutant, ambient air, emission, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.134 Rule for forestry and silvicultural burning permits.

(a) *What is the purpose of this section?* This section establishes a permitting program for forestry and silvicultural burning within the Indian reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground-level concentrations of particulate matter.

(b) *Who is affected by this section?* This section applies to any person who conducts forestry or silvicultural burning.

(c) *What are the requirements for forestry and silvicultural burning?*

(1) A person must apply for a permit to conduct a forestry or silvicultural burn, obtain approval of the permit on the day of the burn, have the permit available on-site during the burn, and conduct the burn in accordance with the terms and conditions of the permit.

(2) The date after which a person must apply for and obtain approval of a permit under this section is identified in the implementation plan in subpart M of this part for the specific reservation where this section applies.

(3) A person must comply with § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule, as applicable.

(4) Nothing in this section exempts or excuses any person from complying with any applicable laws and ordinances of local fire departments or other governmental jurisdictions.

(d) *Are there additional requirements that must be met?*

(1) A person subject to this section must submit an application to the Regional Administrator for each proposed forestry or silvicultural burn. An application must contain, at a minimum, the following information:

(i) Street address of the property upon which the proposed forestry or silvicultural burning will occur or, if there is no street address of the property, the legal description of the property.

(ii) Name, mailing address, and telephone number of the person who will be responsible for conducting the proposed forestry or silvicultural burning.

(iii) A plot plan showing the location of the proposed forestry or silvicultural burning in relation to the property lines and indicating the distances and directions of the nearest residential, public, and commercial properties, roads, and other areas that could be affected by the burning.

(iv) The type and quantity of forestry or silvicultural residues proposed to be burned, including the estimated weight of material to be burned and the area over which burning will be conducted.

(v) A description of the burning method(s) to be used (pile burn, broadcast burn, windrow burn, understory burn, etc.) and the amount of material to be burned with each method.

(vi) A description of the measures that will be taken to prevent escaped burns, including but not limited to the availability of water and firebreaks.

(vii) The requested date(s) that the proposed forestry or silvicultural burning would be conducted.

(viii) Any other information specifically requested by the Regional Administrator.

(2) If the proposed forestry or silvicultural burning is consistent with this section and § 49.131 General rule for open burning, or the EPA-approved Tribal open burning rule, the Regional Administrator may approve the forestry or silvicultural burning permit and authorize burning on the day burning is to be conducted after taking into consideration relevant factors including, but not limited to:

(i) The size, duration, and location of the proposed burn, the current and projected air quality conditions, the forecasted meteorological conditions, and other scheduled burning activities in the surrounding area; and

(ii) Other factors indicating whether or not the proposed forestry or silvicultural burning can be conducted without causing an adverse impact on air quality.

(3) The Regional Administrator, to the extent practical, will consult with and coordinate approvals to burn with the open burning programs of surrounding jurisdictions.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, ambient air, emission, forestry or silvicultural burning, open burning, particulate matter, PM10, PM2.5, Regional Administrator, stack, and uncombined water.

§ 49.135 Rule for emissions detrimental to public health or welfare.

(a) *What is the purpose of this section?* This section is intended to prevent the emission of air pollutants from any air pollution source operating within the Indian reservation from being detrimental to public health or welfare.

(b) *Who is affected by this section?* This section applies to any person who owns or operates an air pollution source.

(c) *What are the requirements for air pollution sources?*

(1) A person must not cause or allow the emission of any air pollutants from an air pollution source, in sufficient quantities and of such characteristic and duration, that the Regional Administrator determines:

(i) Causes or contributes to a violation of any national ambient air quality standard; or

(ii) Is presenting an imminent and substantial endangerment to public health or welfare, or the environment.

(2) If the Regional Administrator makes either of the determinations in paragraph (c)(1) of this section, then the Regional Administrator may require the owner or operator of the source to install air pollution controls and/or to take reasonable precautions to reduce or prevent the emissions. If the Regional Administrator determines that the installation of air pollution controls and/or reasonable precautions are necessary, then the Regional Administrator will require the owner or operator to obtain a permit to construct or permit to operate for the source. The specific requirements will be established in the required permit to construct or permit to operate.

(3) Nothing in this section affects the ability of the Regional Administrator to issue an order pursuant to section 303 of the Act to require an owner or operator to immediately reduce or cease the emission of air pollutants.

(4) Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air pollutant in such place, manner, or amount as to constitute a common law nuisance.

(d) *What does someone subject to this section need to do?* A person subject to this section must comply with the terms and conditions of any permit to construct, permit to operate, or order issued by the Regional Administrator.

(e) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, owner or operator, permit to construct, permit to operate, Regional Administrator, source, and stationary source.

§ 49.136 [Reserved]

§ 49.137 Rule for air pollution episodes.

(a) *What is the purpose of this section?* This section establishes procedures for addressing the excessive buildup of certain air pollutants during periods of stagnant air. This section is intended to prevent the occurrence of an air pollution emergency within the Indian reservation due to the effects of these air pollutants on human health.

(b) *Who is affected by this section?* This section applies to the Regional Administrator and any person who owns or operates an air pollution source within the Indian reservation.

(c) *What are the requirements of this section?*

(1) *Air pollution action level triggers.* Conditions justifying the declaration of an air pollution alert, air pollution warning, or air pollution emergency exist whenever the Regional Administrator determines that the accumulation of air pollutants in any place is approaching, or has reached, levels that could lead to a threat to human health. The following criteria will be used for making these determinations:

(i) *Air stagnation advisory.* An air stagnation advisory may be issued by the Regional Administrator whenever meteorological conditions over a large area are conducive to the buildup of air pollutants.

(ii) *Air pollution alert.* An air pollution alert may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 350 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 17 milligrams per cubic meter (15 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2): 800 micrograms per cubic meter (0.3 ppm), 24-hour average;

(D) Ozone (O_3): 400 micrograms per cubic meter (0.2 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2): 1,130 micrograms per cubic meter (0.6 ppm), 1-hour average; and 282 micrograms per cubic meter (0.15 ppm), 24-hour average.

(iii) *Air pollution warning.* An air pollution warning may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 420 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 34 milligrams per cubic meter (30 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2): 1,600 micrograms per cubic meter (0.6 ppm), 24-hour average;

(D) Ozone (O_3): 800 micrograms per cubic meter (0.4 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2): 2,260 micrograms per cubic meter (1.2 ppm), 1-hour average; and 565 micrograms per cubic meter (0.3 ppm), 24-hour average.

(iv) *Air pollution emergency.* An air pollution emergency may be declared by the Regional Administrator when any one of the following levels is reached, or is projected to be reached, at any monitoring site and the meteorological conditions are such that the level is expected to continue or reoccur over the next 24 hours.

(A) Particulate matter (PM10): 500 micrograms per cubic meter, 24-hour average;

(B) Carbon monoxide (CO): 46 milligrams per cubic meter (40 ppm), 8-hour average;

(C) Sulfur dioxide (SO_2): 2,100 micrograms per cubic meter (0.8 ppm), 24-hour average;

(D) Ozone (O_3): 1,000 micrograms per cubic meter (0.5 ppm), 1-hour average;

(E) Nitrogen dioxide (NO_2): 3,000 micrograms per cubic meter (1.6 ppm), 1-hour average; and 750 micrograms per cubic meter (0.4 ppm), 24-hour average.

(v) *Termination.* Once declared, an air pollution alert, warning, or emergency will remain in effect until the Regional Administrator makes a new determination and declares a new level.

(2) *Announcements by the Regional Administrator.* The Regional Administrator will request that announcement of an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency be broadcast on local television and radio stations in the affected area and posted on their websites. Announcements will also be posted on the EPA Region 10 website and, where possible, on the websites of Tribes within the affected area. These announcements will indicate that air pollution levels exist that could potentially be harmful to human health and indicate actions that people can take to reduce exposure. The announcements will also request voluntary actions to reduce emissions from sources of air pollutants as well as indicate that a ban on open burning is in effect.

(3) *Voluntary curtailment of emissions by sources.* Whenever the Regional Administrator declares an air stagnation advisory, air pollution alert, air pollution warning, or air pollution emergency, sources of air pollutants will be requested to take voluntary actions to reduce emissions. People should refrain from using their wood-stoves and fireplaces unless they are their sole source of heat. People should reduce their use of motor vehicles to the extent possible. Industrial sources should curtail operations or switch to a cleaner fuel if possible.

(4) *Mandatory curtailment of emissions by order of the Regional Administrator.*

(i) Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited whenever the Regional Administrator issues an air stagnation advisory or declares an air pollution alert, air pollution warning, or air pollution emergency. Except for exempted fires set for cultural or traditional purposes, all open burning is prohibited when a burn ban is declared pursuant to § 49.131 General rule for open burning or the EPA-approved Tribal open burning rule.

(ii) Except for exempted fires set for cultural or traditional purposes, any person conducting open burning when such an advisory is issued or declaration is made must either immediately extinguish the fire, or immediately withhold additional material such that the fire burns down.

(iii) During an air pollution warning or air pollution emergency, the Regional Administrator may issue an order to any air pollution source requiring such source to curtail or eliminate the emissions.

(d) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Air pollutant, air pollution source, ambient air, emission, fuel, motor vehicle, open burning, Regional Administrator, and source.

§ 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(a) *What is the purpose of this section?* This section allows the Regional Administrator to develop and maintain a current and accurate record of air pollution sources and their emissions within the Indian reservation.

(b) *Who is affected by this section?* This section applies to any person who owns or operates a part 71 source or an air pollution source that is subject to a standard established under section 111 or section 112 of the Federal Clean Air Act. This section also applies to any person who owns or operates any other air pollution source except those exempted in paragraph (c) of this section.

(c) *What is exempted from this section?* As provided in paragraph (b) of this section, this section does not apply to the following air pollution sources:

(1) Air pollution sources that do not have the potential to emit more than two tons per year of any air pollutant;

(2) Mobile sources;

(3) Single family residences, and residential buildings with four or fewer dwelling units;

(4) Air conditioning units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(5) Ventilating units used for human comfort that do not exhaust air pollutants into the atmosphere from any manufacturing or industrial process;

(6) Furnaces and boilers used exclusively for space heating with a rated heat input capacity of less than 400,000 British thermal units (Btu) per hour;

(7) Cooking of food, except for wholesale businesses that both cook and sell cooked food;

(8) Consumer use of office equipment and products;

(9) Janitorial services and consumer use of janitorial products;

(10) Maintenance and repair activities, except for air pollution sources engaged in the business of maintaining and repairing equipment;

(11) Agricultural activities and forestry and silvicultural activities, including agricultural burning and forestry and silvicultural burning; and

(12) Open burning.

(d) *What are the requirements of this section?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register the source with the Regional Administrator and submit reports as specified in paragraph (e) of this section. Any person who owns or operates a part 71 source must submit reports as specified in paragraph (f) of this section. All registration information and reports must be submitted on forms provided by the Regional Administrator.

(e) *Are there additional requirements that must be met?* Any person who owns or operates an air pollution source subject to this section, except for part 71 sources, must register an air pollution source and submit reports as follows:

(1) *Initial registration.* The owner or operator of an air pollution source that exists on the effective date of this section must register the air pollution source with the Regional Administrator by no later than February 15, 2007. The owner or operator of a new air pollution source must register with the Regional Administrator within 90 days after beginning operation. Submitting an initial registration does not relieve the owner or operator from the requirement to obtain a permit to construct if the new air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(2) *Annual registration.* After initial registration, the owner or operator of an air pollution source must re-register with the Regional Administrator by February 15 of each year. The annual registration must include all of the information required in the initial registration and must be updated to reflect any changes since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing that the information previously furnished to the Regional Administrator is still correct.

(3) *Information to include in initial registration and annual registration.* Each initial registration and annual registration must include the following information if it applies:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this section.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes, air pollution control equipment, and a related flow chart.

(vii) Identification of emission units and air pollutant-generating activities.

(viii) A plot plan showing the location of all emission units and air pollutant-generating activities. The plot plan must also show the property lines of the air pollution source, the height above grade of each emission release point, and the distance and direction to the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily, annual, and maximum hourly basis.

(x) Type and quantity of raw materials used or final product produced on a daily, annual, and maximum hourly basis.

(xi) Typical operating schedule, including number of hours per day, number of days per week, and number of weeks per year.

(xii) Estimates of the total actual emissions from the air pollution source for the following air pollutants: particulate matter, PM10, PM2.5, sulfur oxides (SO_X), nitrogen oxides (NO_X), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb) and lead compounds, ammonia (NH_3), fluorides (gaseous and particulate), sulfuric acid mist (H_2SO_4), hydrogen sulfide (H_2S), total reduced sulfur (TRS), and reduced sulfur compounds, including all calculations for the estimates.

(xiii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(xiv) Any other information specifically requested by the Regional Administrator.

(4) *Procedure for estimating emissions.* The initial registration and annual registration must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. For an existing air pollution source that operated during the calendar year preceding the initial registration or annual registration submittal, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that is submitting its initial registration, the actual emissions are the estimated actual rate of emissions for the current calendar year. The emission estimates must be based upon actual test data or, in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(5) *Report of relocation.* After initial registration, the owner or operator of an air pollution source must report any relocation of the source to the Regional Administrator in writing no later than 30 days prior to the relocation of the source. The report must update the information required in paragraphs (e)(3)(i) through (e)(3)(v) and (e)(3)(viii) of this section, and any other information required by paragraph (e)(3) of this section if it will change as a result of the relocation. Submitting a report of relocation does not relieve the owner or operator from the requirement

to obtain a permit to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or Tribal permit to construct rule.

(6) *Report of change of ownership.* After initial registration, the owner or operator of an air pollution source must report any change of ownership to the Regional Administrator in writing within 90 days after the change in ownership is effective. The report must update the information required in paragraphs (e)(3)(i) through (e)(3)(v) of this section, and any other information required by paragraph (e)(3) of this section if it would change as a result of the change of ownership.

(7) *Report of closure.* Except for regular seasonal closures, after initial registration, the owner or operator of an air pollution source must submit a report of closure to the Regional Administrator in writing within 90 days after the cessation of all operations at the air pollution source.

(8) *Certification of truth, accuracy, and completeness.* All registrations and reports must include a certification signed by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(f) *Requirements for part 71 sources.* The owner or operator of a part 71 source must submit an annual registration report that includes the information required by paragraphs (e)(3) and (e)(4) of this section. This annual registration report must be submitted with the annual emission report and fee calculation worksheet required by part 71 (or by the source's part 71 permit if a different date is specified in the permit). The owner or operator may submit a single combined report provided that the combined report clearly identifies which emissions are the basis for the annual registration report, the part 71 annual emission report, and the part 71 fee calculation worksheet. The first annual registration report for a part 71 source shall be submitted for calendar year 2006, or for the calendar year that the source became subject to part 71, whichever is later.

(g) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, actual emissions, agricultural activities, air pollutant, air pollution source, ambient air, British thermal unit (Btu), emission, emission factor, emission unit, forestry or silvicultural activities, forestry or silvicultural burning, fuel, major source, marine vessel, mobile source, motor vehicle, new air pollution source, nonroad engine, nonroad vehicle, open burning, owner or operator, part 71 source, particulate matter, permit to construct, PM10, PM2.5, potential to emit, rated capacity, Regional Administrator, source, stack, stationary source, and uncombined water.

§ 49.139 Rule for non-Title V operating permits.

(a) *What is the purpose of this section?* This section establishes a permitting program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Indian reservation.

(b) *Who is affected by this section?*

(1) This section applies to:

(i) The owner or operator of any air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit;

(ii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan; or

(iii) Any air pollution source for which the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment.

(2) To the extent allowed by 40 CFR part 71, or a Tribal operating permit program approved pursuant to 40 CFR part 70, a Title V operating permit may be used in lieu of an operating permit under this section to establish the limitations or requirements in paragraph (b)(1) of this section.

(c) *What are the procedures for obtaining an owner-requested operating permit?*

(1) The owner or operator of an air pollution source who wishes to obtain a Federally-enforceable limitation on the source's actual emissions or potential to emit must submit an application to the Regional Administrator requesting such limitation. The application must be submitted on forms provided by the Regional Administrator and contain the information specified in paragraph (d) of this section.

(2) Within 60 days after receipt of an application, the Regional Administrator will determine if it contains the information specified in paragraph (d) of this section and if so, will deem it complete for the purpose of preparing a draft permit to operate. If the Regional Administrator determines that the application is incomplete, it will be returned to the owner or operator along with a description of the necessary information that must be submitted for the application to be deemed complete.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the proposed limitation and its effect on the actual emissions and/or potential to emit of the air pollution source.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed limitations.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, the permit application, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will

be sent to the owner or operator of the air pollution source and will be made available at all of the locations where the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(d) *What must the owner or operator of an air pollution source include in an application for a Federally-enforceable limitation?*

(1) The owner or operator of an air pollution source that wishes to obtain a Federally-enforceable limitation must submit to the Regional Administrator an application, on forms provided by the Regional Administrator, for a permit to operate that includes the following information:

(i) Name of the air pollution source and the nature of the business.

(ii) Street address, telephone number, and facsimile number of the air pollution source.

(iii) Name, mailing address, and telephone number of the owner or operator.

(iv) Name, mailing address, telephone number, and facsimile number of the local individual responsible for compliance with this section.

(v) Name and mailing address of the individual authorized to receive requests for data and information.

(vi) For each air pollutant and for all emission units and air pollutant-generating activities to be covered by a limitation:

(A) The proposed limitation and a description of its effect on actual emissions or the potential to emit. Proposed limitations may include, but are not limited to, emission limitations, production limits, operational restrictions, fuel or raw material specifications, and/or requirements for installation and operation of emission controls. Proposed limitations must have a reasonably short averaging period, taking into consideration the operation of the air pollution source and the methods to be used for demonstrating compliance.

(B) Proposed testing, monitoring, recordkeeping, and reporting requirements to be used to demonstrate and assure compliance with the proposed limitation.

(C) A description of the production processes and a related flow chart.

(D) Identification of emission units and air pollutant-generating activities.

(E) Type and quantity of fuels and/or raw materials used.

(F) Description and estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(G) Estimates of the current actual emissions and current potential to emit, including all calculations for the estimates.

(H) Estimates of the allowable emissions and/or potential to emit that would result from compliance with the proposed limitation, including all calculations for the estimates.

(vii) Any other information specifically requested by the Regional Administrator.

(2) Estimates of actual emissions must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the Regional Administrator. Any emission estimates submitted to the Regional Administrator must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the Regional Administrator.

(3) All applications for a permit to operate must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

(e) *What are the procedures that the Regional Administrator will follow to require an operating permit?*

(1) Whenever the Regional Administrator determines that additional Federally-enforceable requirements are necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment, the owner or operator of the air pollution source will be so notified in writing.

(2) The Regional Administrator may require that the owner or operator provide any information that the Regional Administrator determines is necessary to establish such requirements in a permit to operate under this section.

(3) The Regional Administrator will prepare a draft permit to operate and a draft technical support document that describes the reasons and need for the proposed requirements.

(4) The Regional Administrator will provide a copy of the draft permit to operate and draft technical support document to the owner or operator of the air pollution source and will provide an opportunity for the owner or operator to meet with EPA and discuss the proposed requirements.

(5) The Regional Administrator will provide an opportunity for public comment on the draft permit to operate as follows:

(i) A copy of the draft permit to operate, the draft technical support document, and all other supporting materials will be made available for public inspection in at least one location in the area affected by the air pollution source.

(ii) A notice will be made by prominent advertisement in a newspaper of general circulation in the area affected by the air pollution source of the availability of the draft permit to operate and supporting materials and of the opportunity to comment. Where possible, notices will also be made in the Tribal newspaper.

(iii) Copies of the notice will be provided to the owner or operator of the air pollution source, the Tribal governing body, and the Tribal, State, and local air pollution authorities having jurisdiction in areas outside of the Indian reservation potentially impacted by the air pollution source.

(iv) A 30-day period for submittal of public comments will be provided starting upon the date of publication of the notice. If requested, the Regional Administrator may hold a public hearing and/or extend the public comment period for up to an additional 30 days.

(6) After the close of the public comment period, the Regional Administrator will review all comments received and prepare a final permit to operate and final technical support document, unless the Regional Administrator determines that additional requirements are not necessary to ensure compliance with the implementation plan or to ensure the attainment and maintenance of any national ambient air quality standard or prevention of significant deterioration increment. The final technical support document will include a response to all comments received during the public comment period.

(7) The final permit to operate and final technical support document will be sent to the owner or operator of the air pollution source and will be made available at all of the locations where

the draft permit was made available. In addition, the final permit to operate and final technical support document will be sent to all persons who provided comments on the draft permit to operate.

(8) The final permit to operate will be a final agency action for purposes of administrative appeal and judicial review.

(f) *Definitions of terms used in this section.* The following terms that are used in this section are defined in § 49.123 General provisions: Act, actual emissions, air pollutant, air pollution source, allowable emissions, ambient air, emission, emission factor, Federally enforceable, implementation plan, owner or operator, potential to emit, and Regional Administrator.

§§ 49.140–49.200 [Reserved]

■ 5. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9861 through 49.9870 to read as follows:

Subpart M—Implementation Plans for Tribes—Region X

Implementation Plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon

§ 49.9861 Identification of plan.

This section and §§ 49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.

§ 49.9862 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Burns Paiute Indian Colony.

§ 49.9863 Legal authority. [Reserved]

§ 49.9864 Source surveillance. [Reserved]

§ 49.9865 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Burns Paiute Indian Colony is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9866 Contents of implementation plan.

The implementation plan for the Reservation of the Burns Paiute Indian Colony consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9867 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9868 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9869 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9870 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Burns Paiute Indian Colony:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9871–49.9890 [Reserved]

■ 6. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9891 through 49.9900 to read as follows:

Implementation Plan for the Confederated Tribes of the Chehalis Reservation, Washington

§ 49.9891 Identification of plan.

This section and §§ 49.9892 through 49.9920 contain the implementation plan for the Confederated Tribes of the Chehalis Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Chehalis Reservation.

§ 49.9892 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Chehalis Reservation.

§ 49.9893 Legal authority. [Reserved]

§ 49.9894 Source surveillance. [Reserved]

§ 49.9895 Classification of regions for episode plans.

The air quality control region which encompasses the Chehalis Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.9896 Contents of implementation plan.

The implementation plan for the Chehalis Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9897 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9898 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9899 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9900 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Chehalis Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9901–49.9920 [Reserved]

■ 7. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9921 through 49.9930 to read as follows:

Implementation Plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho

§ 49.9921 Identification of plan.

This section and §§ 49.9922 through 49.9950 contain the implementation plan for the Coeur D'Alene Tribe of the Coeur D'Alene Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Coeur D'Alene Reservation.

§ 49.9922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Coeur D'Alene Reservation.

§ 49.9923 Legal authority. [Reserved]

§ 49.9924 Source surveillance. [Reserved]

§ 49.9925 Classification of regions for episode plans.

The air quality control region which encompasses the Coeur D'Alene Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.9926 Contents of implementation plan.

The implementation plan for the Coeur D'Alene Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9930 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Coeur D'Alene Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9931–49.9950 [Reserved]

■ 8. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9951 through 49.9960 to read as follows:

Implementation Plan for the Confederated Tribes of the Colville Reservation, Washington

§ 49.9951 Identification of plan.

This section and §§ 49.9952 through 49.9980 contain the implementation plan for the Confederated Tribes of the Colville Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Colville Reservation.

§ 49.9952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the

implementation plan for the Colville Reservation.

§ 49.9953 Legal authority. [Reserved]

§ 49.9954 Source surveillance. [Reserved]

§ 49.9955 Classification of regions for episode plans.

The air quality control region which encompasses the Colville Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9956 Contents of implementation plan.

The implementation plan for the Colville Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to public health or welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§ 49.9957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Colville Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.135 Rule for emissions detrimental to public health or welfare.

(k) Section 49.137 Rule for air pollution episodes.

(l) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(m) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9961–49.9980 [Reserved]

■ 9. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.9981 through 49.9990 to read as follows:

Implementation Plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon

§ 49.9981 Identification of plan.

This section and §§ 49.9982 through 49.10010 contain the implementation plan for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.

§ 49.9983 Legal authority. [Reserved]

§ 49.9984 Source surveillance. [Reserved]

§ 49.9985 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.9986 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.9987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.9988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.9989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.9990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.9991–49.10010 [Reserved]

■ 10. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10011 through 49.10020 to read as follows:

Implementation Plan for the Coquille Tribe of Oregon

§ 49.10011 Identification of plan.

This section and § 49.10012 through 49.10040 contain the implementation plan for the Coquille Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Coquille Tribe.

§ 49.10012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Coquille Tribe.

§ 49.10013 Legal authority. [Reserved]

§ 49.10014 Source surveillance. [Reserved]

§ 49.10015 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Coquille Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10016 Contents of implementation plan.

The implementation plan for the Reservation of the Coquille Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Coquille Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10021–49.10040 [Reserved]

■ 12. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10041 through 49.10050 to read as follows:

Implementation Plan for the Cow Creek Band of Umpqua Indians of Oregon

§ 49.10041 Identification of plan.

This section and §§ 49.10042 through 49.10100 contain the implementation plan for the Cow Creek Band of Umpqua Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians.

§ 49.10043 Legal authority. [Reserved]

§ 49.10044 Source surveillance. [Reserved]

§ 49.10045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Cow Creek Band of Umpqua Indians is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10046 Contents of implementation plan.

The implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Cow Creek Band of Umpqua Indians:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10051–49.10100 [Reserved]

■ 12. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10101 through 49.10110 to read as follows:

Implementation Plan for the Confederated Tribes of the Grand Ronde Community of Oregon

§ 49.10101 Identification of plan.

This section and §§ 49.10102 through 49.10130 contain the implementation plan for the Confederated Tribes of the Grand Ronde Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community.

§ 49.10103 Legal authority. [Reserved]

§ 49.10104 Source surveillance. [Reserved]

§ 49.10105 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Confederated Tribes of the Grand Ronde Community is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10106 Contents of implementation plan.

The implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR part 71 in accordance with the requirements of § 49.139.

§ 49.10110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Confederated Tribes of the Grand Ronde Community:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10111–49.10130 [Reserved]

■ 13. Subpart M of part 49 is amended by adding an undesignated center heading and §§ 49.10131 through 49.10140 to read as follows:

Implementation Plan for the Hoh Indian Tribe of the Hoh Indian Reservation, Washington

§ 49.10131 Identification of plan.

This section and §§ 49.10132 through 49.10160 contain the implementation plan for the Hoh Indian Tribe of the Hoh Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Hoh Indian Reservation.

§ 49.10132 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Hoh Indian Reservation.

§ 49.10133 Legal authority. [Reserved]

§ 49.10134 Source surveillance. [Reserved]

§ 49.10135 Classification of regions for episode plans.

The air quality control region which encompasses the Hoh Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10136 Contents of implementation plan.

The implementation plan for the Hoh Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10137 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10138 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10139 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10140 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Hoh Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10141–49.10160 [Reserved]

■ 14. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10161 through 49.10170 to read as follows:

Implementation Plan for the Jamestown S'Klallam Tribe of Washington

§ 49.10161 Identification of plan.

This section and §§ 49.10162 through 49.10190 contain the implementation plan for the Jamestown S'Klallam Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10162 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Jamestown S'Klallam Tribe.

§ 49.10163 Legal authority. [Reserved]

§ 49.10164 Source surveillance. [Reserved]

§ 49.10165 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Jamestown S'Klallam Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10166 Contents of implementation plan.

The implementation plan for the Reservation of the Jamestown S'Klallam Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10167 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10168 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10169 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10170 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the

implementation plan for the Reservation of the Jamestown S'Klallam Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10171–49.10190 [Reserved]

■ 15. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10191 through 49.10200 to read as follows:

Implementation Plan for the Kalispel Indian Community of the Kalispel Reservation, Washington

§ 49.10191 Identification of plan.

This section and §§ 49.1019192 through 49.10220 contain the implementation plan for the Kalispel Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Kalispel Reservation.

§ 49.10192 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Kalispel Reservation.

§ 49.10193 Legal authority. [Reserved]

§ 49.10194 Source surveillance. [Reserved]

§ 49.10195 Classification of regions for episode plans.

The air quality control region which encompasses the Kalispel Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10196 Contents of implementation plan.

The implementation plan for the Kalispel Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10197 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10198 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10199 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10200 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Kalispel Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10201–49.10220 [Reserved]

■ 16. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10221 through 49.10230 to read as follows:

Implementation Plan for the Klamath Indian Tribe of Oregon

§ 49.10221 Identification of plan.

This section and §§ 49.10222 through 49.10250 contain the implementation plan for the Klamath Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Klamath Indian Tribe.

§ 49.10222 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Klamath Indian Tribe.

§ 49.10223 Legal authority. [Reserved]

§ 49.10224 Source surveillance. [Reserved]

§ 49.10225 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Klamath Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10226 Contents of implementation plan.

The implementation plan for the Reservation of the Klamath Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10227 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10228 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10229 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10230 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Klamath Indian Tribe:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10231–49.10250 [Reserved]

■ 17. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10251 through 49.10260 to read as follows:

Implementation Plan for the Kootenai Tribe of Idaho

§ 49.10251 Identification of plan.

This section and §§ 49.10252 through 49.10280 contain the implementation plan for the Kootenai Tribe of Idaho. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Kootenai Tribe of Idaho.

§ 49.10252 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Kootenai Tribe of Idaho.

§ 49.10253 Legal authority. [Reserved]

§ 49.10254 Source surveillance. [Reserved]

§ 49.10255 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Kootenai Tribe of Idaho is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10256 Contents of implementation plan.

The implementation plan for the Reservation of the Kootenai Tribe of Idaho consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10257 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10258 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10259 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10260 Federally-promulgated regulations and Federal implementation plans.

(a) The following regulations are incorporated and made part of the implementation plan for the Reservation of the Kootenai Tribe of Idaho:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10261–49.10280 [Reserved]

■ 18. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10281 through 49.10290 to read as follows:

Implementation Plan for the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington

§ 49.10281 Identification of plan.

This section and §§ 49.10282 through 49.10310 contain the implementation plan for the Lower Elwha Tribal Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lower Elwha Reservation.

§ 49.10282 Approval status.

There are currently no EPA-approved Tribal rules or measures in the

implementation plan for the Lower Elwha Reservation.

§ 49.10283 Legal authority. [Reserved]

§ 49.10284 Source surveillance. [Reserved]

§ 49.10285 Classification of regions for episode plans.

The air quality control region which encompasses the Lower Elwha Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10286 Contents of implementation plan.

The implementation plan for the Lower Elwha Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10287 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10288 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10289 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10290 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lower Elwha Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10291–49.10310 [Reserved]

■ 19. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10311 through 49.10320 to read as follows:

Implementation Plan for the Lummi Tribe of the Lummi Reservation, Washington

§ 49.10311 Identification of plan.

This section and §§ 49.10312 through 49.10340 contain the implementation plan for the Lummi Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Lummi Reservation.

§ 49.10312 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Lummi Reservation.

§ 49.10313 Legal authority. [Reserved]

§ 49.10314 Source surveillance. [Reserved]

§ 49.10315 Classification of regions for episode plans.

The air quality control region which encompasses the Lummi Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10316 Contents of implementation plan.

The implementation plan for the Lummi Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10317 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10318 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10319 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10320 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Lummi Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10321–49.10340 [Reserved]

■ 20. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10341 through 49.10350 to read as follows:

Implementation Plan for the Makah Indian Tribe of the Makah Indian Reservation, Washington

§ 49.10341 Identification of plan.

This section and §§ 49.10342 through 49.10370 contain the implementation plan for the Makah Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Makah Indian Reservation.

§ 49.10342 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Makah Indian Reservation.

§ 49.10343 Legal authority. [Reserved]

§ 49.10344 Source surveillance. [Reserved]

§ 49.10345 Classification of regions for episode plans.

The air quality control region which encompasses the Makah Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10346 Contents of implementation plan.

The implementation plan for the Makah Indian Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10347 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10348 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10349 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10350 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Makah Indian Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10351–49.10370 [Reserved]

■ 21. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10371 through 49.10380 to read as follows:

Implementation Plan for the Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington

§ 49.10371 Identification of plan.

This section and §§ 49.10372 through 49.10400 contain the implementation plan for the Muckleshoot Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Muckleshoot Reservation.

§ 49.10372 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Muckleshoot Reservation.

§ 49.10373 Legal authority. [Reserved]

§ 49.10374 Source surveillance. [Reserved]

§ 49.10375 Classification of regions for episode plans.

The air quality control region which encompasses the Muckleshoot Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10376 Contents of implementation plan.

The implementation plan for the Muckleshoot Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10377 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10378 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10379 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10380 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Muckleshoot Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10381–49.10400 [Reserved]

■ 22. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10401 through 49.10410 to read as follows:

Implementation Plan for the Nez Perce Tribe of Idaho

§ 49.10401 Identification of plan.

This section and §§ 49.10402 through 49.10430 contain the implementation plan for the Nez Perce Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nez Perce Reservation, as described in the 1863 Nez Perce Treaty.

§ 49.10402 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nez Perce Reservation.

§ 49.10403 Legal authority. [Reserved]

§ 49.10404 Source surveillance. [Reserved]

§ 49.10405 Classification of regions for episode plans.

The air quality control region which encompasses the Nez Perce Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.10406 Contents of implementation plan.

The implementation plan for the Nez Perce Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxides.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General Rule for open burning.

(j) Section 49.132 Rule for general open burning permits.

(k) Section 49.133 Rule for agricultural burning permits.

(l) Section 49.134 Rule for forestry and silvicultural burning permits.

(m) Section 49.135 Rule for emissions detrimental to public health or welfare.

(n) Section 49.137 Rule for air pollution episodes.

(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10407 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10408 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10409 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10410 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nez Perce Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.127 Rule for woodwaste burners.

(f) Section 49.128 Rule for limiting particulate matter emissions from wood products industry sources.

(g) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(h) Section 49.130 Rule for limiting sulfur in fuels.

(i) Section 49.131 General rule for open burning.

(j) Section 49.132 Rule for general open burning permits.

(k) Section 49.133 Rule for agricultural burning permits.

(l) Section 49.134 Rule for forestry and silvicultural burning permits.

(m) Section 49.135 Rule for emissions detrimental to public health or welfare.

(n) Section 49.137 Rule for air pollution episodes.

(o) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(p) Section 49.139 Rule for non-Title V operating permits.

§ 49.10411 Permits for general open burning, agricultural burning, and forestry and silvicultural burning.

(a) Beginning June 7, 2005, a person must apply for and obtain a permit under § 49.132 Rule for general open burning permits.

(b) Beginning June 7, 2005, a person must apply for and obtain approval of a permit under § 49.133 Rule for agricultural burning permits.

(c) Beginning June 7, 2005, a person must apply for and obtain approval of a permit under § 49.134 Rule for forestry and silvicultural burning permits.

§§ 49.10412–49.10430 [Reserved]

■ 23. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10431 through 49.10440 to read as follows:

Implementation Plan for the Nisqually Indian Tribe of the Nisqually Reservation, Washington

§ 49.10431 Identification of plan.

This section and §§ 49.10432 through 49.10460 contain the implementation plan for the Nisqually Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Nisqually Reservation.

§ 49.10432 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Nisqually Reservation.

§ 49.10433 Legal authority. [Reserved]

§ 49.10434 Source surveillance. [Reserved]

§ 49.10435 Classification of regions for episode plans.

The air quality control region which encompasses the Nisqually Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10436 Contents of implementation plan.

The implementation plan for the Nisqually Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10437 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10438 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10439 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10440 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Nisqually Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10441–49.10460 [Reserved]

■ 24. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10461 through 49.10470 to read as follows:

Implementation Plan for the Nooksack Indian Tribe of Washington

§ 49.10461 Identification of plan.

This section and §§ 49.10462 through 49.10490 contain the implementation plan for the Nooksack Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Nooksack Indian Tribe.

§ 49.10462 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Nooksack Indian Tribe.

§ 49.10463 Legal authority. [Reserved]

§ 49.10464 Source surveillance. [Reserved]

§ 49.10465 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Nooksack Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10466 Contents of implementation plan.

The implementation plan for the Reservation of the Nooksack Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10467 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10468 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10469 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10470 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the

implementation plan for the Reservation of the Nooksack Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10471–49.10490 [Reserved]

■ 25. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10491 through 49.10500 to read as follows:

Implementation Plan for the Port Gamble Indian Community of the Port Gamble Reservation, Washington

§ 49.10491 Identification of plan.

This section and §§ 49.10492 through 49.10520 contain the implementation plan for the Port Gamble Indian Community. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Gamble Reservation.

§ 49.10492 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Gamble Reservation.

§ 49.10493 Legal authority. [Reserved]

§ 49.10494. Source surveillance. [Reserved]

§ 49.10495 Classification of regions for episode plans.

The air quality control region which encompasses the Port Gamble Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10496 Contents of implementation plan.

The implementation plan for the Port Gamble Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10497 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10498 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10499 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10500 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Gamble Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10501–49.10520 [Reserved]

■ 26. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10521 through 49.10530 to read as follows:

Implementation Plan for the Puyallup Tribe of the Puyallup Reservation, Washington

§ 49.10521 Identification of plan.

This section and §§ 49.10522 through 49.10550 contain the implementation plan for the Puyallup Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply to trust and restricted lands within the 1873 Survey Area of the Puyallup Reservation (the Puyallup Reservation), consistent with the Puyallup Tribe of Indians Land Claims Settlement Act, ratified by Congress in 1989 (25 U.S.C. 1773).

§ 49.10522 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the lands in trust that are within the Puyallup Reservation.

§ 49.10523 Legal authority. [Reserved]

§ 49.10524 Source surveillance. [Reserved]

§ 49.10525 Classification of regions for episode plans.

The air quality control region which encompasses the lands in trust that are within the Puyallup Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10526 Contents of implementation plan.

The implementation plan for the lands in trust that are within the Puyallup Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10527 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10528 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10529 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10530 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the land in trust are within the Puyallup Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10531–49.10550 [Reserved]

■ 27. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10551 through 49.10560 to read as follows:

Implementation Plan for the Quileute Tribe of the Quileute Reservation, Washington

§ 49.10551 Identification of plan.

This section and §§ 49.10552 through 49.10580 contain the implementation plan for the Quileute Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Quileute Reservation.

§ 49.10552 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quileute Reservation.

§ 49.10553 Legal authority. [Reserved]

§ 49.10554 Source surveillance. [Reserved]

§ 49.10555 Classification of regions for episode plans.

The air quality control region which encompasses the Quileute Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10556. Contents of implementation plan.

The implementation plan for the Quileute Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10557 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10558 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10559 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10560 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quileute Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10561–49.10580 [Reserved]

■ 28. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10581 through 49.10590 to read as follows:

Implementation Plan for the Quinault Tribe of the Quinault Reservation, Washington

§ 49.10581 Identification of plan.

This section and §§ 49.10582 through 49.10640 contain the implementation plan for the Quinault Tribe. This plan consists of a combination of Tribal rules

and measures and Federal regulations and measures which apply within the Quinault Reservation.

§ 49.10582 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Quinault Reservation.

§ 49.10583 Legal authority. [Reserved]

§ 49.10584 Source surveillance. [Reserved]

§ 49.10585 Classification of regions for episode plans.

The air quality control region which encompasses the Quinault Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10586 Contents of implementation plan.

The implementation plan for the Quinault Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10587 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10588 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10589 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10590 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Quinault Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10591–49.10640 [Reserved]

■ 29. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10641 through 49.10650 to read as follows:

Implementation Plan for the Sauk-Suiattle Indian Tribe of Washington

§ 49.10641 Identification of plan.

This section and §§ 49.10642 through 49.10670 contain the implementation plan for the Sauk-Suiattle Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Sauk-Suiattle Tribe.

§ 49.10642 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Sauk-Suiattle Tribe.

§ 49.10643 Legal authority. [Reserved]

§ 49.10644 Source surveillance. [Reserved]

§ 49.10645 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Sauk-Suiattle Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10646 Contents of implementation plan.

The implementation plan for the Reservation of the Sauk-Suiattle Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10647 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10648 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10649 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10650 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Sauk-Suiattle Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10651–49.10670 [Reserved]

■ 30. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10671 through 49.10680 to read as follows:

Implementation Plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

§ 49.10671 Identification of plan.

This section and §§ 49.10672 through 49.10700 contain the implementation plan for the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Shoalwater Bay Indian Reservation.

§ 49.10672 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Shoalwater Bay Indian Reservation.

§ 49.10673 Legal authority. [Reserved]

§ 49.10674 Source surveillance. [Reserved]

§ 49.10675 Classification of regions for episode plans.

The air quality control region which encompasses the Shoalwater Bay Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10676 Contents of implementation plan.

The implementation plan for the Shoalwater Bay Indian Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10677 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10678 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10679 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10680 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Shoalwater Bay Indian Reservation:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.
(h) Section 49.135 Rule for emissions detrimental to public health or welfare.
(i) Section 49.137 Rule for air pollution episodes.
(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.
(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10681–49.10700 [Reserved]

■ 31. Subpart M of Part 49 is amended by revising the undesignated center heading and §§ 49.10701 through 49.10702 to read as follows:

Implementation Plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho

§ 49.10701 Identification of plan.

This section and §§ 49.10702 through 49.10730 contain the implementation plan for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Fort Hall Indian Reservation.

§ 49.10702 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Fort Hall Indian Reservation.

■ 32. Subpart M of Part 49 is amended by revising §§ 49.10704 through 49.10706 to read as follows:

§ 49.10704 Source surveillance. [Reserved]

§ 49.10705 Classification of regions for episode plans.

The air quality control region which encompasses the Fort Hall Indian Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	II

§ 49.10706 Contents of implementation plan.

The implementation plan for the Fort Hall Indian Reservation consists of the following rules, regulations, and measures:
(a) Section 49.123 General provisions.
(b) Section 49.124 Rule for limiting visible emissions.
(c) Section 49.125 Rule for limiting the emissions of particulate matter.
(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.
(e) Section 49.129 Rule for limiting emissions of sulfur dioxide
(f) Section 49.130 Rule for limiting sulfur in fuels.
(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 nonattainment Area.

■ 33. Subpart M of Part 49 is amended by revising §§ 49.10709 through 49.10710 to read as follows:

§ 49.10709 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10710 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Fort Hall Indian Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

(l) Section 49.10711 Federal Implementation Plan for the Astaris-Idaho LLC Facility (formerly owned by FMC Corporation) in the Fort Hall PM–10 Nonattainment Area.

■ 34. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10731 through 49.10740 to read as follows:

Implementation Plan for the Confederated Tribes of the Siletz Reservation, Oregon

§ 49.10731 Identification of plan.

This section and §§ 49.10732 through 49.10760 contain the implementation plan for the Confederated Tribes of the Siletz Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Siletz Reservation.

§ 49.10732 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Siletz Reservation.

§ 49.10733 Legal authority. [Reserved]

§ 49.10734 Source surveillance. [Reserved]

§ 49.10735 Classification of regions for episode plans.

The air quality control region which encompasses the Siletz Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	III
Sulfur oxides	III

§ 49.10736 Contents of implementation plan.

The implementation plan for the Siletz Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10737 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10738 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10739 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10740 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Siletz Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permit.

§§ 49.10741–49.10760 [Reserved]

■ 35. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10761 through 49.10770 to read as follows:

Implementation Plan for the Skokomish Indian Tribe of the Skokomish Reservation, Washington

§ 49.10761 Identification of plan.

This section and §§ 49.10762 through 49.10820 contain the implementation plan for the Skokomish Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Skokomish Reservation.

§ 49.10762 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Skokomish Reservation.

§ 49.10763 Legal authority. [Reserved]

§ 49.10764 Source surveillance. [Reserved]

§ 49.10765 Classification of regions for episode plans.

The air quality control region which encompasses the Skokomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10766 Contents of implementation plan.

The implementation plan for the Skokomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10767 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10768 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10769 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10770 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Skokomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10771–49.10820 [Reserved]

■ 36. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10821 through 49.10830 to read as follows:

Implementation Plan for the Spokane Tribe of the Spokane Reservation, Washington

§ 49.10821 Identification of plan.

This section and §§ 49.10822 through 49.10850 contain the implementation plan for the Spokane Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Spokane Reservation.

§ 49.10822 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Spokane Reservation.

§ 49.10823 Legal authority. [Reserved]

§ 49.10824 Source surveillance. [Reserved]

§ 49.10825 Classification of regions for episode plans.

The air quality control region which encompasses the Spokane Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.10826 Contents of implementation plan.

The implementation plan for the Spokane Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10827 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10828 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10829 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10830 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Spokane Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10831–49.10850 [Reserved]

■ 37. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10851 through 49.10860 to read as follows:

Implementation Plan for the Squaxin Island Tribe of the Squaxin Island Reservation, Washington

§ 49.10851 Identification of plan.

This section and §§ 49.10852 through 49.10880 contain the implementation plan for the Squaxin Island Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Squaxin Island Reservation.

§ 49.10852 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Squaxin Island Reservation.

§ 49.10853 Legal authority. [Reserved]

§ 49.10854 Source surveillance. [Reserved]

§ 49.10855 Classification of regions for episode plans.

The air quality control region which encompasses the Squaxin Island Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10856 Contents of implementation plan.

The implementation plan for the Squaxin Island Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10857 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10858 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10859 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10860 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Squaxin Island Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10861–49.10880 [Reserved]

■ 38. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10881 through 49.10890 to read as follows:

Implementation Plan for the Stillaguamish Tribe of Washington

§ 49.10881 Identification of plan.

This section and §§ 49.10882 through 49.10920 contain the implementation plan for the Stillaguamish Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Stillaguamish Tribe.

§ 49.10882 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Stillaguamish Tribe.

§ 49.10883 Legal authority. [Reserved]

§ 49.10884 Source surveillance. [Reserved]

§ 49.10885 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Stillaguamish Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10886 Contents of implementation plan.

The implementation plan for the Reservation of the Stillaguamish Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10887 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10888 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10889 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10890 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Stillaguamish Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10891–49.10920 [Reserved]

■ 39. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10921 through 49.10930 to read as follows:

Implementation Plan for the Suquamish Indian Tribe of the Port Madison Reservation, Washington

§ 49.10921 Identification of plan.

This section and §§ 49.10922 through 49.10950 contain the implementation plan for the Suquamish Indian Tribe of the Port Madison Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Port Madison Reservation.

§ 49.10922 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Port Madison Reservation.

§ 49.10923 Legal authority. [Reserved]

§ 49.10924 Source surveillance. [Reserved]

§ 49.10925 Classification of regions for episode plans.

The air quality control region which encompasses the Port Madison Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10926 Contents of implementation plan.

The implementation plan for the Port Madison Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10927 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10928 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10929 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10930 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Port Madison Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10931–49.10950 [Reserved]

■ 40. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10951 through 49.10960 to read as follows:

Implementation Plan for the Swinomish Indians of the Swinomish Reservation, Washington

§ 49.10951 Identification of plan.

This section and §§ 49.10952 through 49.10980 contain the implementation plan for the Swinomish Indians. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Swinomish Reservation.

§ 49.10952 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Swinomish Reservation.

§ 49.10953 Legal authority. [Reserved]

§ 49.10954 Source surveillance. [Reserved]

§ 49.10955 Classification of regions for episode plans.

The air quality control region which encompasses the Swinomish Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III

Pollutant	Classification
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.10956 Contents of implementation plan.

The implementation plan for the Swinomish Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10957 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10958 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10959 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10960 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Swinomish Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10961–49.10980 [Reserved]

■ 41. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.10981 through 49.10990 to read as follows:

Implementation Plan for the Tulalip Tribes of the Tulalip Reservation, Washington

§ 49.10981 Identification of plan.

This section and §§ 49.10982 through 49.11010 contain the implementation plan for the Tulalip Tribes. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Tulalip Reservation.

§ 49.10982 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Tulalip Reservation.

§ 49.10983 Legal authority. [Reserved]

§ 49.10984 Source surveillance. [Reserved]

§ 49.10985 Classification of regions for episode plans.

The air quality control region which encompasses the Tulalip Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	I
Nitrogen dioxide	III
Ozone	I
Particulate matter (PM10)	I
Sulfur oxides	IA

§ 49.10986 Contents of implementation plan.

The implementation plan for the Tulalip Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.10987 EPA-approved Tribal rules and plans. [Reserved]

§ 49.10988 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.10989 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.10990 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Tulalip Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.10991–49.11010 [Reserved]

■ 42. Subpart M of Part 49 is amended by adding an undesignated center

heading and §§ 49.11011 through 49.11020 to read as follows:

Implementation Plan for the Confederated Tribes of the Umatilla Reservation, Oregon

§ 49.11011 Identification of plan.

This section and §§ 49.11012 through 49.11040 contain the implementation plan for the Confederated Tribes of the Umatilla Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Umatilla Reservation.

§ 49.11012 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Umatilla Reservation.

§ 49.11013 Legal authority. [Reserved]

§ 49.11014 Source surveillance. [Reserved]

§ 49.11015 Classification of regions for episode plans.

The air quality control region which encompasses the Umatilla Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11016 Contents of implementation plan.

The implementation plan for the Umatilla Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for general open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry and silvicultural burning permits.

(k) Section 49.135 Rule for emissions detrimental to public health or welfare.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11017 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11018 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11019 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Umatilla Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.132 Rule for general open burning permits.

(i) Section 49.133 Rule for agriculture burning permits.

(j) Section 49.134 Rule for forestry and silvicultural burning permits.

(k) Section 49.135 Rule for emissions detrimental to public health or welfare.

(l) Section 49.137 Rule for air pollution episodes.

(m) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(n) Section 49.139 Rule for non-Title V operating permits.

§ 49.11021 Permits for general open burning, agricultural burning, and forestry and silvicultural burning.

(a) Beginning January 1, 2007, a person must apply for and obtain a permit under § 49.132 Rule for general open burning permits.

(b) Beginning January 1, 2007, a person must apply for and obtain approval of a permit under § 49.133 Rule for agricultural burning permits.

(c) Beginning January 1, 2007, a person must apply for and obtain approval of a permit under § 49.134 Rule for forestry and silvicultural burning permits.

§§ 49.11022–49.11040 [Reserved]

■ 43. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11041 through 49.11050 to read as follows:

Implementation Plan for the Upper Skagit Indian Tribe of Washington

§ 49.11041 Identification of plan.

This section and §§ 49.11042 through 49.11070 contain the implementation plan for the Upper Skagit Indian Tribe. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Upper Skagit Indian Tribe.

§ 49.11042 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Reservation of the Upper Skagit Indian Tribe.

§ 49.11043 Legal authority. [Reserved]

§ 49.11044 Source surveillance. [Reserved]

§ 49.11045 Classification of regions for episode plans.

The air quality control region which encompasses the Reservation of the Upper Skagit Indian Tribe is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	II

§ 49.11046 Contents of implementation plan.

The implementation plan for the Reservation of the Upper Skagit Indian Tribe consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11047 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11048 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11049 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11050 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Reservation of the Upper Skagit Indian Tribe:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits

§§ 49.11051–49.11070 [Reserved]

■ 44. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11071 through 49.11080 to read as follows:

Implementation Plan for the Confederated Tribes of the Warm Springs Reservation of Oregon

§ 49.11071 Identification of plan.

This section and §§ 49.11072 through 49.11100 contain the implementation plan for the Confederated Tribes of the Warm Springs Reservation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Warm Springs Reservation.

§ 49.11072 Approval status.

There are currently no EPA-approved Tribal rules or measures in the implementation plan for the Warm Springs Reservation.

§ 49.11073 Legal authority. [Reserved]

§ 49.11074 Source surveillance. [Reserved]

§ 49.11075 Classification of regions for episode plans.

The air quality control region which encompasses the Warm Springs Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	II
Sulfur oxides	III

§ 49.11076 Contents of implementation plan.

The implementation plan for the Warm Springs Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11077 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11078 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11079 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11080 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Warm Springs Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11081–49.11100 [Reserved]

■ 45. Subpart M of Part 49 is amended by adding an undesignated center heading and §§ 49.11101 through 49.11110 to read as follows:

Implementation Plan for the Confederated Tribes and Bands of the Yakama Nation, Washington

§ 49.11101 Identification of plan.

This section and §§ 49.11102 through 49.11130 contain the implementation plan for the Confederated Tribes and Bands of the Yakama Nation. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Yakama Reservation.

§ 49.11102 Approval status.

There are currently no EPA-approved Tribal rules or measures in the

implementation plan for the Yakama Reservation.

§ 49.11103 Legal authority. [Reserved]

§ 49.11104 Source surveillance. [Reserved]

§ 49.11105 Classification of regions for episode plans.

The air quality control region which encompasses the Yakama Reservation is classified as follows for purposes of episode plans:

Pollutant	Classification
Carbon monoxide	III
Nitrogen dioxide	III
Ozone	III
Particulate matter (PM10)	I
Sulfur oxides	III

§ 49.11106 Contents of implementation plan.

The implementation plan for the Yakama Reservation consists of the following rules, regulations, and measures:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§ 49.11107 EPA-approved Tribal rules and plans. [Reserved]

§ 49.11108 Permits to construct.

Permits to construct are required for new major stationary sources and major modifications to existing major stationary sources pursuant to 40 CFR 52.21.

§ 49.11109 Permits to operate.

Permits to operate are required for sources not subject to 40 CFR Part 71 in accordance with the requirements of § 49.139.

§ 49.11110 Federally-promulgated regulations and Federal implementation plans.

The following regulations are incorporated and made part of the implementation plan for the Yakama Reservation:

(a) Section 49.123 General provisions.

(b) Section 49.124 Rule for limiting visible emissions.

(c) Section 49.125 Rule for limiting the emissions of particulate matter.

(d) Section 49.126 Rule for limiting fugitive particulate matter emissions.

(e) Section 49.129 Rule for limiting emissions of sulfur dioxide.

(f) Section 49.130 Rule for limiting sulfur in fuels.

(g) Section 49.131 General rule for open burning.

(h) Section 49.135 Rule for emissions detrimental to public health or welfare.

(i) Section 49.137 Rule for air pollution episodes.

(j) Section 49.138 Rule for the registration of air pollution sources and the reporting of emissions.

(k) Section 49.139 Rule for non-Title V operating permits.

§§ 49.11111–49.11130 [Reserved]

§§ 49.11131–49.17810 [Reserved]

■ 46. Subpart M of Part 49 is amended by revising the ''Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections'' to read as follows:

Appendix to Subpart M—Alphabetical Listing of Tribes and Corresponding Sections

Indian Tribe	Refer to the following sections in subpart M
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon	§§ 49.9861 to 49.9890
Chehalis Reservation, Washington-Confederated Tribes of the	§§ 49.9891 to 49.9920
Coeur d'Alene Tribe of the Coeur D'Alene Reservation, Idaho	§§ 49.9921 to 49.9950
Colville Reservation, Washington—Confederated Tribes of the	§§ 49.9951 to 49.9980
Coos, Lower Umpqua and Siuslaw Indians of Oregon—Confederated Tribes of the	§§ 49.9981 to 49.10010
Coquille Tribe of Oregon	§§ 49.10011 to 49.10040
Cow Creek Band of Umpqua Indians of Oregon	§§ 49.10041 to 49.10070
Grand Ronde Community of Oregon—Confederated Tribes of the	§§ 49.10101 to 49.10130
Hoh Indian Tribe of the Hoh Indian Reservation, Washington	§§ 49.10131 to 49.10160
Jamestown S'Klallam Tribe of Washington	§§ 49.10161 to 49.10190
Kalispel Indian Community of the Kalispel Reservation, Washington	§§ 49.10191 to 49.10220
Klamath Indian Tribe of Oregon	§§ 49.10221 to 49.10250
Kootenai Tribe of Idaho	§§ 49.10251 to 49.10280
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington	§§ 49.10281 to 49.10310
Lummi Tribe of the Lummi Reservation, Washington	§§ 49.10311 to 49.10340
Makah Indian Tribe of the Makah Indian Reservation, Washington	§§ 49.10341 to 49.10370
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington	§§ 49.10371 to 49.10400
Nez Perce Tribe of Idaho	§§ 49.10401 to 49.10430
Nisqually Indian Tribe of the Nisqually Reservation, Washington	§§ 49.10431 to 49.10460
Nooksack Indian Tribe of Washington	§§ 49.10461 to 49.10490
Port Gamble Indian Community of the Port Gamble Reservation, Washington	§§ 49.10491 to 49.10520
Puyallup Tribe of the Puyallup Reservation, Washington	§§ 49.10521 to 49.10550
Quileute Tribe of the Quileute Reservation, Washington	§§ 49.10551 to 49.10580
Quinault Tribe of the Quinault Reservation, Washington	§§ 49.10581 to 49.10610
Sauk-Suiattle Indian Tribe of Washington	§§ 49.10641 to 49.10670
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington	§§ 49.10671 to 49.10700
Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho	§§ 49.10701 to 49.10730
Siletz Reservation, Oregon—Confederated Tribes of the	§§ 49.10731 to 49.10760
Skokomish Indian Tribe of the Skokomish Reservation, Washington	§§ 49.10761 to 49.10790
Spokane Tribe of the Spokane Reservation, Washington	§§ 49.10821 to 49.10850
Squaxin Island Tribe of the Squaxin Island Reservation, Washington	§§ 49.10851 to 49.10880
Stillaguamish Tribe of Washington	§§ 49.10881 to 49.10920

Indian Tribe	Refer to the following sections in subpart M
Suquamish Indian Tribe of the Port Madison Reservation, Washington	§§ 49.10921 to 49.10950
Swinomish Indians of the Swinomish Reservation, Washington	§§ 49.10951 to 49.10980
Tulalip Tribes of the Tulalip Reservation, Washington	§§ 49.10981 to 49.11010
Umatilla Reservation, Oregon—Confederated Tribes of the	§§ 49.11011 to 49.11040
Upper Skagit Indian Tribe of Washington	§§ 49.11041 to 49.11070
Warm Springs Reservation of Oregon—Confederated Tribes of the	§§ 49.11071 to 49.11100
Yakama Nation, Washington—Confederated Tribes and Bands of the	§§ 49.11101 to 49.11130

[FR Doc. 05–6367 Filed 4–7–05; 8:45 am]

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Friday,
April 8, 2005

Part III

Department of Transportation

National Highway and Traffic Safety Administration

49 CFR Parts 571 and 585

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2005–20586]

RIN 2127–AJ23

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a new Federal motor vehicle safety standard (FMVSS) requiring installation of a tire pressure monitoring system (TPMS) capable of detecting when one or more of a vehicle's tires is significantly under-inflated. This final rule responds to a mandate in the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. This final rule requires installation in all new light vehicles of a TPMS capable of detecting when one or more of the vehicle's tires, up to all four tires, is 25 percent or more below the manufacturer's recommended inflation pressure (placard pressure) or a minimum activation pressure specified in the standard, whichever is higher.

DATES: *Effective Date:* This final rule is effective April 8, 2005, except for subpart G of 49 CFR part 585, which is effective September 1, 2005.

Compliance Date: Consistent with the phase-in commencing October 5, 2005, all new light vehicles must be equipped with a TPMS that meets the requirements of the standard by September 1, 2007, with the following exceptions. Vehicle manufacturers need not meet the standard's requirements for the TPMS malfunction indicator and related owner's manual language until September 1, 2007 (*i.e.*, at the end of the phase-in), and vehicles produced by final-stage manufacturers and alterers must be equipped with a compliant TPMS (including a malfunction indicator) by September 1, 2008. However, manufacturers may voluntarily certify vehicles to FMVSS No. 138 and earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, that are manufactured between April 8, 2005, and the conclusion of the phase-in.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by May 23, 2005.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. George Soodoo or Mr. Samuel Daniel, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Mr. Eric Stas, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This final rule re-establishes FMVSS No. 138, *Tire Pressure Monitoring Systems*, which requires installation of a tire pressure monitoring system in light vehicles, thereby implementing a mandate in the TREAD Act. In accord with the Act, the objective of this standard is to supplement regular tire maintenance on the part of drivers by providing a warning system to alert them when one or more of a vehicle's tires become significantly under-inflated. Under-inflation of tires increases the likelihood of many different types of crashes, including those involving: (1) Skidding and/or

loss of control of the vehicle; (2) hydroplaning; (3) increases in stopping distance; (4) flat tires and blowouts, and (5) overloading of the vehicle. We anticipate that 90 percent of drivers will respond to a TPMS low tire pressure warning by re-inflating their tires to the recommended placard pressure. Once all new light vehicles are equipped with compliant TPMSs, we expect that a resulting 119–121 fatalities would be prevented each year.

As background, we note that Standard No. 138 was promulgated previously through a final rule published in the **Federal Register** on June 5, 2002 (67 FR 38704). It included two compliance options (*i.e.*, a TPMS with a four-tire, 25-percent under-inflation detection capability or a TPMS with a one-tire, 30-percent under-inflation detection capability). However, on August 6, 2003, the U.S. Court of Appeals for the Second Circuit (Second Circuit) issued its opinion in *Public Citizen* v. *Mineta*,[1] which held that the TREAD Act requires a TPMS capable of detecting when any combination of tires, up to all four tires, is significantly under-inflated. It vacated FMVSS No. 138 and directed the agency to conduct further rulemaking. This final rule sets requirements for the TPMS standard in a manner consistent with the Second Circuit's opinion. It also responds to numerous public comments submitted in response to the agency's September 16, 2004 notice of proposed rulemaking (NPRM) (69 FR 55896).

A. Requirements of the Final Rule

After careful consideration of all available information, including public comments, the agency has decided to retain in the final rule most of the elements of the proposed rule, with the primary changes involving the detection times for providing the low tire pressure warning and TPMS malfunction warning, modification of the minimum activation pressure values for certain light truck tires, and modifications to the standard's phase-in schedule. Although public comments on the NPRM discussed a wide variety of issues, the majority of comments focused on the topics of the TPMS malfunction indicator and the proposed schedule for lead time and phase-in, the two major aspects of the NPRM not raised at earlier stages of the TPMS rulemaking.

As reflected in the final rule, FMVSS No. 138 is a performance standard. The agency has sought to establish the standard in a fashion that both meets the need for motor vehicle safety and is also technology-neutral. Particularly in light of the rapid advances in TPMS technology in the past few years, we expect that vehicle manufacturers will have a number of technologies available for compliance purposes. Although the details of the standard, public comments, and the agency's response thereto, are discussed at length in the balance of this document, the following points summarize the key requirements of the standard.

Consistent with the Second Circuit's opinion, FMVSS No. 138 requires new passenger cars, multi-purpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to a total of all four tires, is significantly under-inflated. Specifically, the TPMS must warn the driver when the pressure in one or more of the vehicle's tires is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. (We note that in response to a petition for rulemaking by the Alliance of Automobile Manufacturers (Alliance) and that organization's subsequent, related comments on the NPRM, we have decided, as an interim measure, to modify our minimum activation pressure (MAP) values for some light truck tires under the standard. Once the agency conducts further safety research, we will either confirm or propose to modify these MAP requirements in response to that petition.)

If any tire drops below the standard's activation threshold, the TPMS is required to provide the low tire pressure warning by illuminating a yellow telltale within 20 minutes of additional travel within a speed range of 50–100 km/hr. This telltale must remain illuminated (and re-illuminate upon subsequent vehicle start-ups) until the under-inflation condition has been corrected. The agency has determined that the specified under-inflation threshold and the detection time will allow the TPMS to provide a timely warning that permits the driver to take corrective action before adverse consequences ensue. Thus, we believe that the low inflation pressure detection requirement of the standard both fulfills the mandate of the TREAD Act and meets the need for motor vehicle safety.

Because a small number of aftermarket and replacement tires have construction characteristics that may prevent the continued proper functioning of the TPMS when the original equipment tires are replaced and because of the difficulty in identifying those problematic tires, NHTSA has decided to require the vehicle to be certified with the tires originally installed on the vehicle at the time of initial vehicle sale. (This reflects a change from the June 2002 final rule, which required vehicle manufacturer to certify continued compliance with any optional or replacement tires of the size(s) recommended by the vehicle manufacturer.)

Nevertheless, we expect that a typical vehicle will outlast its original set of tires, and we continue to believe that it is important that drivers continue to receive the benefits of the TPMS after the vehicle's tires are replaced. Therefore, we have decided upon a different approach than that contained in the June 2002 final rule for addressing the issue of maintaining proper TPMS functionality when a vehicle's original tires are replaced. Specifically, the final rule requires the TPMS to include a malfunction indicator (provided either by a separate telltale or a combined low tire pressure/malfunction indicator telltale) that would alert the driver in situations in which the TPMS is unable to detect low tire pressure.

This malfunction indicator is required to detect incompatible replacement tires, as well as other system faults. Similar to the low tire pressure warning, the system is required to trigger a TPMS malfunction warning telltale within 20 minutes of additional travel within a speed range of 50–100 km/hr after such a malfunction occurs. Consistent with the specific requirements of the standard, this telltale must remain illuminated (and re-illuminate upon subsequent vehicle start-ups) until the TPMS malfunction has been corrected. We believe that the TPMS malfunction indicator will provide useful information to the driver regarding the long-term operability of the TPMS, thereby increasing the overall benefits of the system.

The final rule also specifies required language to be included in the vehicle owner's manual (or in writing to the first purchaser if there is no owner's manual) that describes the purpose of the low tire pressure warning telltale, the consequences of significantly under-inflated tires, the meaning of the low tire pressure telltale when it is illuminated, and corrective action to be taken. The owner's manual must also explain the presence and operation of the TPMS malfunction indicator and the potential problems associated with aftermarket and replacement tires and

[1] 340 F.3d 39 (2d Cir. 2003).

rims that may prevent continued TPMS functionality. These provisions are designed to ensure that consumers are aware of the importance of regular tire maintenance and of the supporting role played by their vehicle's TPMS.

The final rule provides that compliance testing for FMVSS No. 138 will be conducted on a specific test course, namely the Southern Loop of the Treadwear Course in and around San Angelo, Texas. We believe that this approach offers several advantages. First, testing can be conducted in a timely fashion without the need to design or build a new test track. Further, this course has already been used for several years by NHTSA and the tire industry for uniform tire quality grading (UTQG) purposes. We believe that the specified test course provides an objective test that is representative of a variety of roadways and real world conditions.

B. Lead Time and Phase-In

In order to provide the public with the safety benefits of TPMSs as rapidly as possible, compliance with this final rule is set to commence on October 5, 2005, which marks the start of a two-part phase-in period. Subject to the special provisions discussed below, the phase-in schedule for FMVSS No. 138 is as follows: 20 percent of a vehicle manufacturer's light vehicles are required to comply with the standard during the period from October 5, 2005, to August 31, 2006; 70 percent during the period from September 1, 2006 to August 31, 2007, and all light vehicles thereafter.

For the reasons discussed in detail in section IV.B of this notice, we believe that it is practicable for vehicle manufacturers to meet the requirements of the phase-in discussed above, with the following exceptions. We have decided to defer vehicle manufacturers' compliance with the standard's malfunction indicator requirements and associated owner's manual language requirements until September 1, 2007. (There is no separate phase-in for the malfunction indicator requirements.) After consideration of the many public comments from vehicle manufacturers on this issue, we understand that adding the TPMS malfunction indicator will involve substantial design and production changes and that additional lead time will be required to effect those changes. In addition, our analysis demonstrates that the safety benefits associated with the early introduction of TPMSs, even without malfunction indicators, far outweigh the benefits of delaying the standard until all systems also can meet the malfunction indicator requirements. We note that manufacturers may voluntarily install a TPMS malfunction indicator prior to the mandatory compliance date.

Because our statute generally requires that a standard may not compel compliance less than 180 days after the standard is prescribed,[2] we have decided to postpone the starting compliance date from the NPRM's proposed date of September 1, 2005 to a date that corresponding to 180 days after publication of this final rule. However, we have decided to have the balance of the standard's phase-in coincide with traditional model year production schedules, in order to mitigate production and cost impacts.

We have decided not to delay the start of compliance until Model Year 2007, as several commenters suggested. If the agency were to forego the first year of the phase-in, we would expect to lose 24 lives and to have 1,675 more injuries than would have occurred if TPMSs had been provided in vehicles, as called for in the final rule's phase-in.

Moreover, vehicle manufacturers have been well aware of the key requirements of the final rule (other then the malfunction indicator requirement), at least since the time of the Second Circuit's decision in August 2003 (if not earlier), and the September 2004 NPRM clearly conveyed the agency's intention to begin a phase-in that would coincide with Model Year (MY) 2006. Further, they did not provide any data to demonstrate that compliance with a Fall 2005 start of the phase-in would be impracticable. In addition, we believe that concerns related to lead time are either rendered moot or significantly mitigated by the final rule's allowance of both carry-forward and carry-backward credits.

As a means of maintaining a mandatory compliance date in Fall 2005, we have decided to ease implementation further by permitting carry-forward and carry-back credits. Vehicle manufacturers can earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, that are manufactured between the effective date of this rule and the conclusion of the phase-in.[3] In order to maximize the time available to earn such credits, we are making this final rule effective upon publication, although vehicle manufacturers have no certification responsibilities until the official start of the phase-in.

With carry-backward credits, manufacturers may defer compliance with a part or all of the certification requirements under the standard for the first period of the phase-in, provided they certify a correspondingly increased number of vehicles during the second period of the phase-in. We believe that permitting carry-backward credits would not impact the overall safety benefits of the final rule because the same number of vehicles would be subject to compliance certification, although the distribution may vary over the model years of the phase-in.

On other topics related to the phase-in, NHTSA has decided to exclude multi-stage manufacturers and alterers from the requirements of the phase-in and to extend by one year the time for compliance by those manufacturers (*i.e.*, until September 1, 2008). The final rule also excludes small volume manufacturers (*i.e.*, manufacturers producing less than 5,000 vehicles for sale in the U.S. market in one year) from the phase-in, requiring vehicles produced by such manufacturers to comply with the standard on September 1, 2007.

C. Differences Between the Final Rule and the Notice of Proposed Rulemaking

As noted above, NHTSA has decided to adopt most of the provisions contained in the NPRM as part of this final rule. The main differences between the NPRM and the final rule involve the phase-in schedule for the standard, the requirements for low tire pressure and TPMS malfunction detection time, changes to the minimum activation pressure for certain light truck tires, and modifications to the vehicle owner's manual requirements. A number of minor technical modifications also were incorporated in the final rule in response to public comments on the NPRM. All of these changes and their rationale are discussed fully in the balance of this document. However, the following points briefly describe the main differences between the NPRM and this final rule.

- In the final rule, we have decided to increase the time period for the TPMS to detect low tire pressure to 20 minutes. The NPRM had proposed a time period of 10 minutes for the TPMS to detect low tire pressure and illuminate the warning telltale.
- The final rule specifies a time period for the TPMS to detect a system malfunction and to illuminate the TPMS malfunction indicator (20 minutes) and acknowledged that many systems may require vehicle motion to detect a malfunction. The NPRM had been silent on these matters.

[2] 49 U.S.C. 30111(d).

[3] We note that carry-forward credits may not be used to defer the mandatory compliance date of September 1, 2007 for all covered vehicles.

• The agency has decided to require the words (''TPMS'') for the dedicated TPMS malfunction telltale, rather than the symbol proposed in the NPRM. We have also lengthened the time period for flashing of the combined low tire pressure/malfunction indicator telltale from the proposed one minute to a period of 60–90 seconds.

• The final rule has adopted minimum activation pressures for light truck Load Range ''D'' and ''E'' tires of 35 psi (240 kPa), which is different from the values in the NPRM. (However, the agency has stated that it is conducting further research in this area and that it may revisit this issue.)

• The final rule's requirements for the specified statement in the owner's manual regarding the TPMS have changed from the NPRM. Specifically, these changes include clarification that both aftermarket tires and rims may affect the TPMS's continued functionality, tailoring of the language to reflect the two options for the TPMS malfunction indicator, stressing of the driver's ongoing responsibility for regular tire maintenance, and alerting consumers that some replacement tires may call for an inflation pressure different than what is reflected on the vehicle placard.

• In the final rule's test procedures, we have deleted the NPRM's test requirements related to system reset. We have decided that this provision is impracticable, based upon how most resets operate, and unnecessary, because vehicles equipped with a TPMS reset normally include instructions for the proper use of the reset feature as part of the owner's manual.

The final rule's phase-in schedule has changed from the NPRM's 50–90–100% requirement to a 20–70–100% requirement. In another change from the NPRM, vehicle manufacturers are not required to meet the standard's requirements for the TPMS malfunction indicator (and associated owner's manual requirements) until the end of the phase-in (*i.e.*, September 1, 2007).

• The final rule permits vehicle manufacturers to elect to use carry-backward credits in meeting the phase-in requirements under the standard. That provision was not present in the NPRM.

• The final rule extends the compliance date for final-stage manufacturers and alterers by one year (*i.e.*, to September 1, 2008). The NPRM had proposed to require compliance for these manufacturers' production by September 1, 2007.

D. Impacts of the Final Rule

Depending upon the technology chosen for compliance, the agency estimates that the total quantified safety benefits from reductions in crashes due to skidding/loss of control, stopping distance, flat tires, and blowouts, will be 119–121 fatalities prevented and 8,373–8,568 injuries prevented or reduced in severity each year, once all light vehicles meet the TPMS requirement.

Additional benefits are expected to accrue from the final rule as a result of improved fuel economy ($19.07–$23.08 per vehicle over its lifetime), longer tread life ($3.42–$4.24 per vehicle), and property damage savings and travel delay savings from avoided crashes ($7.70–$7.79 per vehicle) (assuming a three-percent discount rate).

The agency estimates that the average cost per vehicle to meet the standard's requirements to be $48.44–$69.89, depending upon the technology chosen for compliance. Since approximately 17 million light vehicles are produced for sale in the U.S. each year, the total annual vehicle cost is expected to range from approximately $823–$1,188 million per year.

II. Background

A. The TREAD Act

Congress enacted the TREAD Act [4] on November 1, 2000. Section 13 of that Act [5] required the Secretary of Transportation, within one year of the statute's enactment, to complete a rulemaking ''to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated.'' Section 13 also required the regulation to take effect within two years of the completion of the rulemaking. Responsibility for this rulemaking was delegated to NHTSA.

B. Rulemaking History Prior to the September 2004 Notice of Proposed Rulemaking

FMVSS No. 138, *Tire Pressure Monitoring Systems*, has had a protracted regulatory history. The following discussion briefly summarizes the key milestones in the TPMS rulemaking process.

Today's final rule was preceded by an initial NPRM on July 26, 2001 (66 FR 38982). After considering public comments received on that NPRM, NHTSA prepared a final rule, which was submitted to the Office of Management and Budget (OMB) for review. After reviewing the draft final rule, OMB returned it to NHTSA for further consideration, with a letter explaining the reasons for doing so, on February 12, 2002.

On June 5, 2002, NHTSA published a final rule for TPMS (67 FR 38704). Consistent with the OMB return letter, the agency divided the TPMS final rule into two parts, because it decided to defer its decision as to which long-term performance requirements for TPMS would best satisfy the mandate of the TREAD Act. This deferral was intended to allow the agency time to consider additional data on the effect and performance of TPMSs currently in use.

The June 5, 2002 final rule provided two compliance options during the interim period (*i.e.*, between November 1, 2003 and October 31, 2006). Under the first compliance option, vehicle manufacturers would have been required to equip their light vehicles (*i.e.*, those with a GVWR of 4,536 kg (10,000 pounds) or less) with TPMSs to warn the driver when the pressure in any single tire or in each tire in any combination of tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. Under the second compliance option, the vehicle's TPMS would have been required to warn the driver when the pressure in any single tire is 30 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.[6]

The two compliance options were outgrowths of the alternative sets of requirements proposed in the initial NPRM. In response to comments indicating that current indirect TPMSs could not meet the NPRM's proposed detection requirements, the agency adopted a one-tire, 30-percent option that would have permitted indirect TPMSs to be used during the phase-in period.[7] NHTSA received 13 petitions

[4] Pub. L. 106–414, 114 Stat. 1800 (2000).

[5] *See* 49 U.S.C. 30123 note (2003).

[6] The minimum levels of pressure were the same for both compliance options.

[7] There are two types of TPMSs currently available, direct TPMSs and indirect TPMSs. Direct TPMSs have a pressure sensor in each wheel that transmits pressure information to a receiver. In contrast, indirect TPMSs do not have tire pressure sensors, but instead rely on the wheel speed sensors, typically a component of an anti-lock braking system, to detect and compare differences in the rotational speed of a vehicle's wheels, which correlate to differences in tire pressure.

We anticipate that new types of TPMS technology may be developed in the future that will be capable of meeting the standard's requirements. For example, such systems might incorporate aspects of

Continued

for reconsideration of the June 2002 final rule, raising a variety of issues.

However, after issuance of the June 2002 final rule, Public Citizen, Inc., New York Public Interest Research Group, and the Center for Auto Safety filed a suit challenging certain aspects of the TPMS regulation. The Court of Appeals for the Second Circuit issued its opinion in *Public Citizen, Inc.* v. *Mineta* on August 6, 2003, which held that the agency's adoption in the standard of a one-tire, 30-percent compliance option was ''contrary to the intent of the TREAD Act and, in light of the relative shortcomings of indirect systems, arbitrary and capricious.'' [8] The Court found that the TREAD Act unambiguously mandates TPMSs capable of monitoring each tire, up to a total of four tires, effectively precluding the one-tire, 30-percent option, or any similar option that cannot detect under-inflation in any combination of tires up to four tires.

Ultimately, the Court vacated the standard (FMVSS No. 138) in its entirety and directed the agency to issue a new rule consistent with its August 6, 2003 opinion. NHTSA published a final rule in the **Federal Register** on November 20, 2003, vacating FMVSS No. 138 (68 FR 65404). With the standard vacated, that notice clarified that, at that point in time, vehicle manufacturers had no certification or reporting responsibilities.

In light of the foregoing, NHTSA commenced rulemaking efforts to reestablish FMVSS No. 138 in a manner consistent with the Court's opinion and responsive to the issues raised in earlier petitions for reconsideration, the majority of which remained relevant. To this end, the agency issued a second NPRM on September 16, 2004 (69 FR 55896) (discussed immediately below) and obtained and considered public comments on that NPRM, actions leading to this latest final rule for TPMS.

For a more complete discussion of this earlier period of the regulatory history of the TPMS rulemaking, readers should consult the June 5, 2002 final rule and the September 16, 2004 NPRM.

both direct and indirect TPMSs (*i.e.*, hybrid systems). In concert with TPMS suppliers, tire manufacturers might be able to incorporate TPMS sensors directly into the tires themselves. In issuing a performance standard, NHTSA is cognizant of and seeks to encourage technological innovation.

[8] 340 F.3d 39, 54 (2d Cir. 2003).

III. September 2004 Notice of Proposed Rulemaking (NPRM) and Public Comments

A. The NPRM

As noted above, NHTSA published an NPRM on September 16, 2004 that proposed to re-establish FMVSS No. 138, *Tire Pressure Monitoring Systems,* in a manner consistent with the Court's opinion. Specifically, it proposed to require passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to all four of its tires, are significantly under-inflated. The NPRM was drafted so as to be technology-neutral, so as to permit compliance with any available TPMS technology that meets the performance requirements.

The NPRM included the following points, which highlighted the key provisions of the proposed requirements.

- The TPMS would be required to warn the driver when the pressure in one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher.
- Vehicle manufacturers would be required to certify vehicle compliance under the standard with the tires installed on the vehicle at the time of initial vehicle sale.[9]
- The TPMS would be required to include a low pressure telltale (yellow) that must remain illuminated as long as any of the vehicle's tires remains under-inflated and the vehicle's ignition locking system is in the ''On'' (''Run'') position. The telltale would be required to extinguish when all of the vehicle's tires cease to be significantly under-inflated. The TPMS's low tire pressure warning telltale would be required to perform a bulb-check at vehicle start-up.
- The TPMS also would be required to include a malfunction indicator to alert the driver when the system is non-operational and, thus, unable to provide the required low tire pressure warning. The NPRM proposed that TPMS malfunction could be indicated by either:

(1) Installing a separate, dedicated telltale (yellow) that illuminates upon detection of the malfunction and remains continuously illuminated as long as the ignition locking system is in the ''On'' (''Run'') position and the situation causing the malfunction remains uncorrected, or

(2) Designing the low tire pressure telltale so that it flashes for one minute when a malfunction is detected, after which the telltale would remain illuminated as long as the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence would be repeated upon each subsequent vehicle start-up until the situation causing the malfunction has been corrected.

If the option for a separate telltale is selected, the TPMS malfunction telltale would be required to perform a bulb-check at vehicle start-up.

- The TPMS would not be required to monitor the spare tire (if provided) either when it is stowed or when it is installed on the vehicle.
- For vehicles certified under the standard, vehicle manufacturers would be required to provide in the owner's manual an explanation of the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, the meaning of the telltale when it is illuminated, and what actions drivers should take when the telltale is illuminated. Vehicle manufacturers also would be required to provide a specified statement in the owner's manual regarding: (1) Potential problems related to compatibility between the vehicle's TPMS and various replacement tires, and (2) the presence and operation of the TPMS malfunction indicator.

The NPRM proposed requirements for covered vehicles manufactured on or after September 1, 2005 (*i.e.*, MY 2006), subject to the following phase-in schedule: 50 percent of a vehicle manufacturer's light vehicles would be required to comply with the standard during the first year (September 1, 2005 to August 31, 2006); 90 percent during the second year (September 1, 2006 to August 31, 2007); and all vehicles thereafter.

The NPRM stated that in order to encourage early compliance, the agency was proposing to permit carry-forward credits for vehicles that are certified as complying with the standard and that are manufactured on or after the

[9] The NPRM noted that some vehicle manufacturers authorize their dealers to replace the vehicle's factory-installed tires with other tires, including ones with a different size and/or recommended cold tire inflation pressure. The NPRM stated that the TPMS would have to perform properly with any such tires, because the vehicle could be equipped with those tires at the time of initial sale. Of course, the manufacturer would not have that responsibility if the dealer installed other tires without manufacturer authorization. However, the dealer would violate the Motor Vehicle Safety Act if it installed tires on a new vehicle that prevented the TPMS from functioning properly. See 49 U.S.C. 30112(a).

effective date of the final rule. However, under the proposal, beginning September 1, 2007, all covered vehicles would be required to comply with the standard, without regard to any earlier carry-forward credits.

We proposed to exclude from the phase-in requirements final stage manufacturers, alterers, and small volume manufacturers (SVMs). The NPRM also proposed phase-in reporting requirements consistent with the proposed phase-in schedule.

B. Summary of Public Comments on the NPRM

NHTSA received comments on the September 16, 2004 NPRM from a variety of interested parties including 10 TPMS manufacturers,[10] 13 automobile manufacturers and their trade associations,[11] seven tire manufacturers and their trade associations,[12] two public interest groups,[13] and six other interested organizations.[14] Comments were also received from 24 individuals. All of these comments may be found in Docket No. NHTSA–2004–19054.

The commenters raised a variety of issues with the proposed requirements, including ones related to the low tire pressure warning lamp activation, the TPMS malfunction indicator lamp, the TPMS low pressure and MIL telltales, test procedures, minimum activation pressure requirements, the need for a tire reserve load, owner's manual requirements, TPMS operation with replacement tires/spare tires, lead time and phase-in, and other topics. The following discussion summarizes the main issues raised by these public comments and the positions expressed on these topics. A more complete discussion of the public comments is provided under Section IV.C, which provides an explanation of the agency rationale for the requirements of the final rule and addresses related public comments by issue.

Low Tire Pressure Warning Lamp Activation Requirements

Regarding the activation requirements for the low tire pressure warning lamp, commenters raised concerns related to the NPRM's proposed under-inflation detection level, as well as the proposed 10-minute time period for under-inflation detection. Public interest groups and certain other commenters urged NHTSA to adopt a more stringent threshold for under-inflation detection (ranging from 15–20 percent below placard pressure). These commenters argued that existing technologies (*i.e.*, direct TPMSs) can detect and warn the driver at lesser levels of under-inflation, thereby permitting drivers more time to take corrective action and maximizing the benefits provided by the system.

The tire industry also urged NHTSA to adopt a more stringent under-inflation detection threshold, with a trigger point tied to the vehicle placard pressure and the Gross Axle Weight Rating (GAWR). Specifically, the comment of TIA stated that the under-inflation detection warning should be triggered at 1–2 psi below the vehicle's recommended cold tire inflation pressure or at an inflation level where the tires can no longer carry the vehicle weight, whichever is higher. Other commenters suggested that the under-inflation detection threshold should take into account various vehicle loading conditions.

Vehicle manufacturers did not comment on the under-inflation detection level, which suggests that they do not object to that aspect of the NPRM.

Regarding the NPRM's proposed 10-minute time period for low tire pressure detection, vehicle manufacturers generally recommended extending that time period, arguing that even direct systems would require additional time to detect, confirm, and relay a warning about a significantly under-inflated tire. Comments from vehicle manufacturers also suggested that in order to be technology-neutral and to permit vehicle certification with indirect systems, the under-inflation detection time should be extended in situations where the vehicle has two, three, or four significantly under-inflated tires; those comments argued that there is not a safety need for rapid detection in such cases, where under-inflation is likely to result from diffusion over a considerable period of time.

Public interest groups, the European Communities (EC), and certain other industry commenters argued that the proposed 10-minute detection time period is too long and that it would allow vehicles to continue to travel in a potentially unsafe condition without a warning. These comments suggested that such situations are unnecessary because technology currently exists that would permit a shorter detection time.

TPMS MIL Activation Requirements

Regarding the time period for malfunction detection, vehicle manufacturers stated their concern regarding the absence in the NPRM of an expressed time period for the TPMS to detect a malfunction and to illuminate the TPMS MIL. Commenters stated that immediate detection, as implied by the NPRM, is not technically possible and that in most cases, the vehicle must be driven in order to detect a malfunction. Several commenters stated that TPMSs cannot detect malfunctions any faster than the system can detect low tire pressure (because the same subsystems are involved) and that the same durational parameters should be set for both functions (with suggestions ranging from 20–30 minutes).

A number of manufacturers commented that the proposed TPMS malfunction requirements are overly broad and are in need of modification. Specific commenters asserted that TPMSs would have difficulties detecting or reporting various types of malfunctions.

One commenter raised the issue of MIL disablement (or suppression) in situations where the TPMS sending units have been removed as a result of the replacement of the original equipment tires and rims with aftermarket components that are not compatible with the direct-sensing TPMS. (The NPRM made no provision for MIL disablement.)

Telltale Requirements

A number of commenters discussed the issue of how the TPMS MIL would operate, particularly when it is combined with the low tire pressure warning telltale. Some commenters,

[10] Comments were received from the following TPMS manufacturers: (1) ALPS Automotive, Inc.; (2) Aviation Upgrade Technologies; (3) BERU Corporation; (4) Continental Teves, Inc.; (5) Emtop Ltd.; (6) EnTire Solutions, LLC; (7) ETV Corporation Pty Limited; (8) MLHO, Inc.; (9) NIRA Dynamics AB, and (10) Schrader Electronics Ltd.

[11] Comments were received from the following automobile manufacturers and related trade associations: (1) Alliance of Automobile Manufacturers; (2) American Suzuki Motor Corporation; (3) Association of International Automobile Manufacturers, Inc.; (4) BMW of North America, LLC; (5) DaimlerChrysler Corporation; (6) DaimlerChrysler and Mercedes-Benz U.S.A.; (7) Fuji Heavy Industries USA, Inc. (makers of Subaru vehicles); (8) General Motors North America; (9) Honda Motor Co., Ltd. and American Honda Motor Co., Inc.; (10) Hyundai American Technical Center, Inc./Kia Motors Corporation; (11) Mitsubishi Motors R&D of America, Inc.; (12) Nissan North America, Inc.; (13) Porsche Cars North America, Inc., and (14) Volkswagen/Audi.

[12] Comments were received from the following tire manufacturers and related trade associations: (1) European Tyre and Rim Technical Organisation; (2) Japan Automobile Tyre Manufacturers Association, Inc.; (3) Rubber Manufacturers Association; (4) Sumitomo Rubber Industries; (5) The Tire Rack; (6) Tire and Rim Association, Inc., and (7) Tire Industry Association.

[13] Comments were received from the following public interest groups: (1) Advocates for Highway and Auto Safety, and (2) Public Citizen.

[14] Comments were received from the following other interested manufacturers, trade associations, and groups: (1) American Automobile Association; (2) the European Communities; (3) Fairfax County Public Schools; (4) GE Infrastructure Sensing; (5) National Automobile Dealers Association, and (6) Specialty Equipment Market Association.

primarily representing vehicle manufacturers, argued that the MIL requirements are design-restrictive and may impose unnecessary costs. Those commenters requested flexibility in providing the malfunction warning through a variety of means (*e.g.*, text messaging and audible warnings), provided that the warning is explained in the vehicle owner's manual.

Several commenters expressed concern about how the malfunction warning would be provided to the driver in a combined telltale. Some commenters argued that flashing should be used to indicate low tire pressure; some argued that flashing should be used to indicate malfunction; some argued that the flashing sequence should be longer, and still others argued that any sort of flashing may be confusing to drivers.

Public interest groups generally favored requiring a separate telltale to indicate TPMS malfunction, in order to provide a clear message to drivers. However, manufacturers commented that separate telltales are unnecessary, add cost, and consume valuable space on the instrument panel that could be used to provide other safety messages.

Commenters overwhelmingly recommended that NHTSA reconsider its proposed symbol to indicate a TPMS malfunction, which was considered to be confusing, and a variety of alternatives were suggested. Some commenters expressed support for only permitting a low tire pressure telltale that indicates which tire is under-inflated, because such symbol is both more recognizable and offers enhanced information to the driver.

Regarding telltale color, some manufacturers recommended permitting the low tire pressure telltale to change color (*e.g.*, from yellow to red) to indicate when under-inflation has progressed to a dangerously low level, as determined by the vehicle manufacturer. Commenters also raised the issue of the color of the TPMS MIL, with some recommending yellow and others recommending red.

In their comments, manufacturers also raised issues related to extinguishment of the TPMS telltales. For example, concerns were raised regarding the possibility of a TPMS reset button extinguishing the telltale before the underlying problem (*i.e.*, low tire pressure or system malfunction) has been corrected. Others suggested that the final rule should specify that tires must be re-inflated to a level at least 10 percent above the warning threshold before the TPMS low pressure telltale would extinguish.

Another topic raised by commenters related to the TPMS combined telltale involved requests for the final rule to set an illumination priority for the low tire pressure and TPMS malfunction warnings. Commenters did not agree as to which warning should take precedence.

Tire-Related Issues

Another major area of comment involved tire issues. Regarding the issue of the NPRM's proposed approach for TPMS operation with replacement and spare tires, public interest groups generally objected to the agency's tentative decision to require compliance certification with the tires originally installed on the vehicle, but to require a malfunction indicator to indicate to the driver when replacement tires have been installed on the vehicle which prevent the continued proper functioning of the TPMS. Those commenters suggested that the TPMS should either be required to function with all replacement tires and original equipment (OE) full-sized spare tires (so as to provide continuing operational benefits to consumers) or that there should be ongoing efforts to make the public aware of those tires which have been found to prevent proper TPMS functioning.

Comments from the tire industry also supported a requirement for the TPMS to operate with replacement tires, particularly in light of those tires' prevalence in the marketplace. Those commenters further argued that vehicle manufacturers should be required to provide affordable access to TPMS service information to all tire dealers and service providers. Other commenters expressed concern regarding the impact the proposed rule would have on small businesses.

The tire industry recommended that the final rule should include a tire pressure reserve requirement in order to ensure that the vehicle can safely carry the vehicle maximum load, even if the tires are under-inflated by 25 percent below placard pressure. Otherwise, commenters argued that the vehicle's tires may fall below the level designated in the tire industry's load/pressure tables but still not trigger a low pressure warning from the TPMS. These commenters were especially concerned that this situation could lead to increased instances of tire failure, particularly if drivers come to rely on the TPMS as a substitute for regular tire maintenance. Moreover, the Tire and Rim Association (TRA) stated its intention to modify its 2005 Year Book to provide additional instruction for manufacturers of TPMS-equipped vehicles.

The Alliance commented that the NPRM's proposed Table 1, which specifies minimum activation pressures for different tires, should be modified for Load Range ''C,'' ''D,'' and ''E'' light truck (LT) tires. According to the Alliance, the MAPs currently contained in Table 1 do not allow such tires to be used across the safe operating ranges of inflation pressures for which loads are specified in the TRA Yearbooks. The Alliance argued that unless corrective action is taken, vehicle manufacturers could face costly vehicle redesigns or be forced to substitute less capable tires in certain vehicle applications.

Owner's Manual Requirements

Several commenters suggested modifications to the NPRM's proposed language related to TPMSs for the vehicle owner's manual. One comment involved allowing vehicle manufacturers discretion to tailor the owner's manual statement to the system installed on the vehicle, provided that certain basic topics were addressed. Other comments included clarifying the discussion of permissible telltale formats, of proper pressures for replacement wheel/tire combinations, and of ongoing driver responsibility for maintaining proper tire inflation pressure.

Test Procedures

Commenters raised a number of issues related to the NPRM's proposed test conditions and procedures. The issue of calibration time was raised, with at least one manufacturer commenter suggesting that no calibration period is necessary, and other manufacturer commenters arguing that the NPRM's proposed 20-minute calibration time should be extended to 30 minutes or one hour.

Comments from the tire industry recommended that the test conditions and performance parameters in the final rule should be expanded to capture a fuller range of real world driving conditions. Specifically, these comments recommended expanding the proposed ambient temperature range to include colder and warmer temperatures, testing under slippery road conditions, and expanding the vehicle speed range to include both slower and faster speeds.

Commenters also offered suggestions pertaining to the test procedures for TPMS MIL activation, which would implement their recommendations regarding the types of malfunctions the system should be required to detect and how quickly they should be detected.

Manufacturers also commented on the proposed cool-down period of up to one hour, as contained in S6(e) of the proposed test procedures. The Alliance recommended reducing the cool-down period to five minutes or less, arguing that in certain cases, tires deflated during testing when cold may warm up to a point above the warning threshold before the TPMS has time to detect a significantly under-inflated tire. Other commenters made similar arguments and recommended adding additional pressure checks to the test procedures to ensure that the pressure level has been set accurately during testing.

Other commenters urged NHTSA to modify the test procedures to recognize that testing may need to be conducted with a pressure other than placard pressure in order to properly match the load on the tires. These comments suggested that the owner's manual should be consulted in order to select the proper pressure under certain situations.

Several commenters also raised issues regarding use of a system reset feature during testing, including use in situations where the driver switches between summer and winter tires.

Lead Time and Phase-In

In general, most of the vehicle manufacturers that commented on the NPRM requested additional lead time and a modified phase-in schedule, arguing that more time is necessary to incorporate TPMS technologies into their new vehicle production processes. Most vehicle manufacturer commenters recommended a two-year phase-in, with an initial compliance date beginning on September 1, 2006. Furthermore, vehicle manufacturers universally commented that it would not be possible to incorporate the TPMS MIL until September 1, 2007.

In contrast, public interest groups expressed support for the NPRM's compliance schedule, as proposed.

Other Issues

Commenters also raised a variety of other issues in response to the NPRM. These included small business impacts, environmental impacts, maintenance issues, markings on vehicles equipped with direct TPMSs, definitions, educational efforts, alternative systems, over-inflation detection, temperature and altitude compensation, system longevity, and harmonization. Comments on each of these issues will be described and addressed in section IV.C of this notice.

IV. The Final Rule and Response to Public Comments

A. Summary of the Requirements

After careful consideration of public comments on the NPRM, this final rule re-establishes FMVSS No. 138, *Tire Pressure Monitoring Systems,* in a manner consistent with the Second Circuit's opinion. Specifically, it requires passenger cars, multi-purpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to all four of its tires, is significantly under-inflated. Subject to the phase-in schedule and the exceptions below, compliance with the requirements of the final rule commences for covered vehicles manufactured on or after October 5, 2005 (*i.e.*, MY 2006). The standard is intended to be technology-neutral, so as to permit compliance with any available TPMS technology that meets the standard's performance requirements.

The following points highlight the key provisions of the final rule.

• The TPMS is required to detect and to provide a warning to the driver within 20 minutes of when the pressure of one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard, whichever pressure is higher. These minimum activation pressures are included in Table 1 of FMVSS No. 138.[15]

• Vehicle manufacturers must certify vehicle compliance under the standard with the tires installed on the vehicle at the time of initial vehicle sale.[16]

• The TPMS must include a low tire pressure warning telltale[17] (yellow) that must remain illuminated as long as any of the vehicle's tires remain significantly under-inflated and the vehicle's ignition locking system is in the ''On'' (''Run'') position.[18] The TPMS's low tire pressure warning telltale must perform a bulb-check at vehicle start-up.

• The TPMS must also include a TPMS malfunction indicator to alert the driver when the system is non-operational, and thus unable to provide the required low tire pressure warning.[19] The TPMS malfunction indicator must detect a malfunction within 20 minutes of occurrence and provide a warning to the driver. This final rule provides two options by which vehicle manufacturers may indicate a TPMS malfunction:

(1) Installation of a separate, dedicated telltale (yellow) that illuminates upon detection of the malfunction and remains continuously illuminated as long as the ignition locking system is in the ''On'' (''Run'') position and the situation causing the malfunction remains uncorrected, or

(2) Designing the low tire pressure telltale so that it flashes for a period of at least 60 seconds and no longer than 90 seconds when a malfunction is detected, after which the telltale must remain continuously illuminated as long as the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated upon each subsequent vehicle start-up until the situation causing the malfunction has been corrected.

If the option for a separate telltale is selected, the TPMS malfunction telltale must perform a bulb-check at vehicle start-up.

• The TPMS is not required to monitor the spare tire (if provided),

[15] We note that the Alliance of Automobile Manufacturers submitted a Petition for Rulemaking on April 29, 2003 that asks NHTSA to make certain changes to the MAPs in Table 1 (*see* Docket No. NHTSA–2000–8572–265). For a more complete discussion of the MAP issue raised by the Alliance, see section IV.C.4.d of this document. NHTSA is in the process of evaluating the issues raised in the Alliance petition. However, we have decided to modify the values in Table 1 pertaining to Load Range ''D'' and ''E'' tires, pending completion of our analysis.

[16] We note that some vehicle manufacturers authorize their dealers to replace the vehicle's factory-installed tires with other tires, including ones with a different size and/or recommended cold tire inflation pressure. The TPMS must perform properly with any such tires, because the vehicle could be equipped with those tires at the time of initial sale. Of course, the manufacturer would not have that responsibility if the dealer installed other tires without manufacturer authorization.

[17] As part of this final rule, we are adding two versions of the TPMS low tire pressure telltale and a TPMS malfunction telltale to Table 2 of FMVSS No. 101, *Controls and Displays.* The regulatory text in this final rule incorporates the TPMS telltales in Table 2, as that table currently exists in the Code of Federal Regulations. However, we note that NHTSA published an NPRM in the **Federal Register** on September 23, 2003 that proposes to update and to expand FMVSS No. 101 (68 FR 55217). Publication of the present version of Table 2 here is not intended to suggest a change in approach to the ongoing FMVSS No. 101 rulemaking. We anticipate incorporating the TPMS telltales in a revised Table 2, once a final decision is reached on updating Standard No. 101.

[18] We note that if a vehicle manufacturer elects to install a low tire pressure telltale that indicates which tire is under-inflated, the telltale must correctly identify the under-inflated tire. *See* S4.3.2.

[19] We note that the TPMS telltale(s) may be incorporated as part of a reconfigurable display, provided all requirements of the standard are met.

either when it is stowed or when it is installed on the vehicle.

• For vehicles certified under the standard, vehicle manufacturers must provide in the owner's manual a specified statement explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, the meaning of the telltale when it is illuminated, and what actions drivers should take when the telltale is illuminated. Vehicle manufacturers also must provide a specified statement in the owner's manual regarding: (1) potential problems related to compatibility between the vehicle's TPMS and various replacement or alternate tires and wheels, and (2) the presence and operation of the TPMS malfunction indicator. For vehicles that do not come with an owner's manual, the required information must be provided in writing to the first purchaser at the time of initial vehicle sale.

B. Lead Time and Phase-In

As discussed in the NPRM, the Second Circuit's decision vacating FMVSS No. 138 necessitated a change in the standard's phase-in schedule in order to ensure the practicability of the standard's implementation, particularly for those manufacturers that had intended to certify to the June 5, 2002 final rule's one-tire, 30-percent option. Responses to the agency's September 9, 2003 Special Orders to 14 vehicle manufacturer and 13 TPMS suppliers demonstrated that in anticipation of the start of the phase-in under the June 2002 final rule, most vehicle manufacturers were moving aggressively toward installation of TPMSs capable of meeting the four-tire, 25-percent detection requirement, although some were not. The information provided by TPMS suppliers indicated sufficient capacity to supply TPMSs with a four-tire, 25-percent detection capability in quantities that would easily meet the phase-in requirements. Accordingly, in the NPRM, the agency proposed that 50 percent of a vehicle manufacturer's light vehicles would be required to comply with the standard during the first year (September 1, 2005 to August 31, 2006); 90 percent during the second year (September 1, 2006 to August 31, 2007); and all vehicles thereafter.

In public comments on the NPRM, vehicle manufacturers argued that they would not be able to meet the standard's requirements given the proposed lead time and phase-in schedule. Most of their concerns involved the TPMS malfunction indicator, a newly proposed requirements which manufacturers uniformly agreed would necessitate significant engineering and vehicle design efforts and corresponding production changes. Vehicle manufacturers stated that they could meet the TPMS MIL requirements (and associated owner's manual requirements) by September 1, 2007. More generally, vehicle manufacturers commented that, setting aside the issue of the MIL requirements, the phase-in schedule nevertheless may be too aggressive.

We acknowledge that the TPMS MIL represents a new requirement impacting TPMS design and functionality and that vehicle manufacturers may require additional time to incorporate the MIL into their production processes. However, we do not believe that implementation of the entire standard should be delayed until technical changes related to the TPMS MIL can be fully resolved, because that would deny the public the safety benefits of TPMSs in the meantime. Accordingly, we believe that it is preferable to move rapidly to implement the standard, but to delay the compliance date only for the TPMS MIL requirements and associated requirements in the owner's manual.

In light of the above and subject to the vehicle manufacturer option for carry-backward credits discussed below, NHTSA has decided to adopt the following phase-in schedule: 20 percent of a vehicle manufacturer's light vehicles are required to comply with the standard during the period from October 5, 2005, to August 31, 2006; 70 percent during the period from September 1, 2006 to August 31, 2007, and all light vehicles thereafter. However, vehicle manufacturers are not required to comply with the requirements related to the TPMS malfunction indicator (including associated owner's manual requirements) until September 1, 2007; however, at that point, all covered vehicles must meet all relevant requirements of the standard (*i.e.*, no additional phase-in for MIL requirements). The final rule includes phase-in reporting requirements consistent with the phase-in schedule discussed above.

Small volume manufacturers (*i.e.*, those manufacturers producing fewer than 5,000 vehicles for sale in the U.S. per year during the phase-in period) are not subject to the phase-in requirements, but their vehicles must meet the requirements of the standard beginning September 1, 2007.

Consistent with the policy set forth in NHTSA's February 14, 2005 final rule on certification requirements for vehicles built in two or more stages and altered vehicles (70 FR 7414), final-stage manufacturers and alterers must certify compliance for covered vehicles manufactured on or after September 1, 2008. However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date.

NHTSA has decided to permit vehicle manufacturers to earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, that are manufactured between the effective date of this rule and the conclusion of the phase-in. These carry-forward credits could be used during the phase-in, but they could not be used to delay compliance certification for vehicles produced after the conclusion of the phase-in. Except for vehicles produced by final-stage manufacturers and alterers (who receive an additional year for compliance), all covered vehicles must comply with FMVSS No. 138 on September 1, 2007, without use of any carry-forward credits.

Furthermore, we have determined that there is good cause to make this final rule effective upon publication so that vehicle manufacturers would have a standard in effect to which they may certify vehicles for purposes of early, voluntary compliance and to maximize the time for earning carry-forward credits. We explicitly note that vehicle manufacturers have no mandatory compliance responsibilities under the standard until the start of the phase-in.

To further ease implementation, we have decided to also provide carry-backward credits, whereby vehicle manufacturers may defer compliance with a part or all of the certification requirements for the first period of the phase-in, provided that they certify a correspondingly larger percentage of vehicles under the standard during the second period of the phase-in. We believe that permitting carry-backward credits would not impact the overall safety benefits of the final rule, because the same number of vehicles would be subject to compliance certification, although the distribution may vary over the model years of the phase-in. Corresponding changes have been added to the regulatory text of both FMVSS No. 138, as well as the TPMS phase-in requirements contained in 49 CFR Part 585.

C. Response to Public Comments by Issue

As noted previously, public comments on the September 2004 NPRM for TPMS raised a variety of issues with the NPRM's proposed requirements. Each of these topics will be discussed in turn, in order to explain

how these comments impacted the agency's determinations in terms of setting requirements for this final rule.

1. Low Tire Pressure Warning Lamp Activation Requirement

(a) Under-Inflation Detection Level. The NPRM proposed to require the TPMS to illuminate a low tire pressure warning telltale not more than 10 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding tire type, whichever is higher (*see* S4.2(a)).

A number of commenters raised concerns about the 25-percent under-inflation detection level proposed in the NPRM. Although their reasoning differed, these commenters all argued that a more stringent detection level should be required under the final rule.

Public Citizen stated that a 20-percent threshold should be adopted. Public Citizen argued that NHTSA's technology-neutral standard, as proposed, was crafted to accommodate indirect TPMSs (which Public Citizen considers to be an ''inferior technology'') when there is other adequate technology readily available (*i.e.*, direct TPMSs). (Advocates for Highway and Auto Safety (Advocates) provided a similar comment.) According to Public Citizen, NHTSA should not reduce safety requirements in order to accommodate inferior technology, particularly when other affordable and more effective technology exists.

Public Citizen stated that the aspect of the agency's rationale that a higher threshold could discourage technological innovation is unsubstantiated. The comments of Public Citizen similarly characterized as unsubstantiated NHTSA's concerns about nuisance warnings that could result from a detection level that is set too close to placard pressure and requested substantive driver behavioral research to confirm that this would be a problem. (Similarly, Advocates argued that NHTSA acted arbitrarily in selecting a 25-percent under-inflation threshold (as opposed to the 20-percent level proposed in the 2001 NPRM) and that the record does not justify NHTSA's claim that a 20-percent under-inflation detection level would result in nuisance warnings.)

Public Citizen rounded out its comments in this area by characterizing the NPRM's 25-percent under-inflation detection level as a cost-saving measure. It argued that safety should outweigh cost considerations and that NHTSA's other rulemaking activities provided support for adopting a 20-percent under-inflation detection level (*e.g.*, the 2001 TPMS NPRM and the agency's rollover research). The Advocates argued that NHTSA has not compared the actual benefits of the two thresholds and suggested that NHTSA's New Car Assessment Program (NCAP) data would support the theory that different pressure levels correlate with different levels of risk.

Fairfax County Public Schools expressed support for a system that either provides a built-in tire pressure gauge or provides an earlier warning, such as a 20-percent under-inflation detection level. It stated that it is not always easy to find a functioning air compressor when traveling, so it is better to provide an earlier indication before the vehicle is past the point of safe operation.

Mr. James Anderson, an individual, commented that the under-inflation detection level should be set at some point between 15 percent and 18 percent below placard pressure, the point at which the commenter argued that the tire sidewall begins to over-flex. According to Mr. Anderson, as the tire over-flexes, heat begins to build up, but the tire is no longer able to dissipate the heat. Mr. Anderson stated that at some point above 200 °F, the tire compounds begin a reversion process, which may lead to delamination and, ultimately, separation of tire components. He argued that a warning level 25-percent below placard pressure would not permit sufficient time for driver recognition and timely action to correct the under-inflation situation before tire damage may occur.

The Tire Industry Association (TIA) argued that the proposed TPMS under-inflation detection level is too lenient, suggesting that the trigger point instead should be tied to the vehicle's placard pressure and GAWR. Specifically, TIA stated that the under-inflation detection warning should be triggered at 1–2 psi below the vehicle's recommended cold tire inflation pressure or at an inflation level where the tires can no longer carry the vehicle weight, whichever is higher. (TIA's argument here is related to the issue of Tire Reserve Load, a topic discussed later in this document.) TIA argued that the standard should require the TPMS to provide a warning before there is a serious problem, thereby taking into account that drivers may not immediately take corrective action when the warning telltale illuminates.

ETV Corporation (ETV) stated that the TPMS should be required to take into account different load conditions in determining the need to activate the low tire pressure warning.

The National Automobile Dealers Association (NADA) stated that although the final rule must factor in technological and cost constraints, it should specify the smallest under-inflation threshold that can be reliably monitored.

EnTire Solutions, LLC (EnTire) commented that the direct TPMSs it produces are capable of providing low pressure warnings at a more stringent threshold than the NPRM's proposed 25-percent under-inflation detection level. EnTire also stated that its system and those of other TPMS manufacturers have multiple thresholds for under-inflation detection. GE Infrastructure Sensing stated that technology currently exists for TPMSs to detect a 20-percent under-inflation level.

The Tire Rack argued that the 25-percent under-inflation detection level does not provide an adequate and timely warning to the driver and may provide a false sense of security. The Tire Rack also stated that, to the extent the 25-percent under-inflation detection level reflects limitations of current technology, the final rule should establish successively more stringent requirements in order to ensure future improvements in TPMS technology. It argued that establishing goals and timetables as part of the final rule would encourage technological developments for TPMSs.

The American Automobile Association (AAA) stated that the NPRM proposes to set the under-inflation warning threshold at a level that is insufficiently stringent, because a tire that is 25 percent below the manufacturer's recommended inflation pressure could already present a dangerous situation, particularly if the vehicle is in a fully-loaded condition. AAA argued that under-inflated tires ''produce increased heat, which is a major cause of failure.'' According to AAA, an effective TPMS is one that provides a warning before a dangerous situation is imminent and which does not mislead motorists into equating the absence of an illuminated warning light with safety.

BERU Corporation (BERU) commented that the under-inflation detection level should be set to trigger a warning at either 25-percent below placard pressure or a minimum activation pressure of 1.4 bar.

The Rubber Manufacturers Association (RMA) commented that lost fuel efficiency was not adequately accounted for in the assessment of economic costs when selecting an

under-inflation detection threshold. The RMA asserted that the NPRM's benefits calculations indicated that 26 percent of vehicles have tires that are under-inflated below placard pressure, but that associated fuel efficiency costs were not considered.

The Specialty Equipment Market Association (SEMA) argued that TPMSs should be reprogrammable in order to accommodate alternate and replacement tires with different pressure thresholds, or alternatively, the system could include ''smart'' software that would automatically detect the proper pressure threshold. According to SEMA, as currently proposed, when a higher-pressure tire is installed on the vehicle, the TPMS would not indicate low tire pressure until the tire is 25-percent below the value for the lower-pressure, original tire, and the converse would also be a problem, with the telltale actuating prematurely when a lower-pressure aftermarket tire is installed. SEMA stated that this situation would defeat the intent of the rule, give drivers a false sense of security, and be potentially problematic for new, low-profile tires that may be easily damaged.

As part of the final rule, we have decided to retain the proposed under-inflation detection level, by which the TPMS is required to illuminate a low tire pressure warning telltale whenever the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than their the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding tire type, whichever is higher. We have reached this determination for the following reasons.

Selecting an appropriate notification threshold level for the TPMS is one of the most fundamental matters to be resolved as part of this rulemaking. It involves balancing the safety benefits of alerting consumers to low tire pressure against the risks of over-alerting them to the point where the warning becomes a nuisance that may be ignored. We believe that the final rule's 25-percent under-inflation detection level strikes the proper balance in this regard.

As discussed in the June 5, 2002 final rule, NHTSA conducted a tire pressure survey that inspected over 11,500 vehicles, which reported that 26 percent of passenger cars and 29 percent of light trucks had at least one tire that was 25 percent or more below the recommended inflation pressure for that vehicle (*see* 67 FR 38704, 38713). However, despite this substantial percentage of vehicles with under-inflated tires at this level, incidents of tire failures remain infrequent. NHTSA conducted testing on a variety of Standard Load P-metric tires at 20 psi with 100-percent load at 75 mph for 90 minutes on a dynamometer, and none of these tires failed (*see* 67 FR 38704, 38726 (June 5, 2002)). This testing led the agency to conclude that warnings at less severe conditions will give drivers sufficient time to check and re-inflate their vehicles' tires before the tires experience appreciable damage. Accordingly, we believe that an under-inflation detection level of 25 percent would have a strong fleet impact, holding driver behavior constant.

However, if we instead selected an under-inflation detection threshold that is too stringent, with some commenters arguing for a level as small as 1 or 2 psi below placard pressure, the warning telltale might illuminate frequently, and the driver would need to repeatedly stop and add a small amount of air to the tires in order to extinguish the telltale. After servicing the tires in this manner for the first few times, the driver might decide to postpone action on the TPMS's warnings or ignore such warnings entirely. Thus, if the under-inflation warning threshold were to be set too low, the safety benefits associated with the TPMS's low pressure warning could be lost. Because we have determined that a 25-percent under-inflation detection threshold already provides a warning to the driver before adverse safety consequences arise, providing a more stringent warning threshold would not be expected to provide additional safety benefits, although it could increase the risk of the nuisance warnings discussed above.

We disagree with Public Citizen's reading of the Court's decision in *Public Citizen* v. *Mineta*, implying that the Court had somehow ruled against NHTSA's development of a technology-neutral standard or its consideration of costs as a part of the rulemaking. In fact, the Court held that it was appropriate for NHTSA to consider costs as part of the rulemaking, stating ''the agency was correct to consider the relative costs,''[20] although the Court disagreed with how the agency weighed those costs in setting compliance options in the June 2002 final rule. Furthermore, the Court specifically found the four-tire, 25-percent under-inflation detection level to be reasonable. The Court held, ''Given that the 25 percent standard was a substantially more cost effective means of preventing injuries and saving lives than the 20 percent standard, we conclude that it was reasonable for NHTSA to adopt the former and reject the latter.''[21]

Available agency data show that a TPMS with a four-tire, 25-percent under-inflation threshold is more cost-effective than one with a four-tire, 20-percent under-inflation threshold. This issue was specifically addressed in the Final Economic Assessment (FEA) for the June 2002 final rule, which found that the net cost per equivalent life saved for a four-tire, 20-percent system would be $5.1–$5.3 million but that the net cost per equivalent life saved for a four-tire, 25-percent system would be $4.3 million.[22] Although we realize that the precise values of these figures are somewhat outdated, we believe that their cost-effectiveness relative to each other has not changed significantly. For additional information on the cost of alternative systems considered, please consult the FEA and the Final Regulatory Impact Analysis (FRIA) for this final rule, which has been included in the docket for this rulemaking.

We are not adopting BERU's recommendations regarding the under-inflation detection test procedures because BERU has not provided any rationale to explain why the existing procedures are inadequate.

Regarding the issue of TPMS reprogrammability raised by SEMA, we have decided to permit, but not require, such a feature. However, we reiterate that we will conduct compliance testing with the tires installed on the vehicle at the time of initial sale, and we will follow manufacturer instructions for resetting the TPMS.

(b) *Time Period for Low Pressure Detection.* As noted above, paragraph S4.2(a) of the NPRM proposed to require the TPMS to detect and provide a warning to the driver within 10 minutes after a tire becomes significantly under-inflated (*i.e.*, reaches the warning threshold specified in the standard). Under paragraph S4.2(b), the NPRM proposed to require the low pressure telltale to continue to illuminate as long as the pressure in any of the tires is equal to or less than the activation threshold specified in S4.2(a) and the ignition locking system is in the ''On'' (''Run'') position, whether or not the engine is running. The NPRM proposed that the telltale must extinguish after the inflation pressure is corrected.

A number of commenters urged NHTSA to modify this ten-minute detection time requirement as part of

[20] *Public Citizen* v. *Mineta*, 340 F.3d 39, 57 (2d Cir. 2003).

[21] *Id.* at 62.

[22] *See* page *iv* of the FEA (Docket No. NHTSA–2000–8572–216).

the final rule, with some commenters recommending a longer time period and others recommending a shorter one.

Manufacturers that commented on low pressure detection time generally recommended extending the time period. BMW of North America, LLC (BMW) stated that the TPMS requirements should reflect real world needs. As a result, BMW stated that the NPRM's 10-minute detection requirement should be retained when only one tire becomes significantly under-inflated (*e.g.*, to detect situations where a tire is punctured by a nail or sustains other damage that could result in a relatively rapid loss of inflation pressure). BMW stated that when two, three, or all four tires become significantly under-inflated at the same time, the detection time requirement should be extended to 90 minutes, because under-inflation in these circumstances is likely to result from slow diffusion over months and is not likely to result in a problem requiring immediate attention. NIRA Dynamics provided similar arguments and reasoning, although it recommended a detection time of 20 minutes for a single tire and at least one hour for multiple tires.

Sumitomo Rubber Industries (Sumitomo) offered a different assessment of the time needed for low pressure detection. Sumitomo stated that it is appropriate to maintain a 10-minute detection (and extinguishment) requirement for one tire, but that a TPMS would need at least 30 minutes (preferably one hour) to detect (and extinguish) multiple under-inflated tires.

In its comments, Hyundai American Technical Center, Inc./ Kia Motors Corporation (Hyundai) provided yet another recommendation regarding low tire pressure detection time, stating that the time period for detection and verification of low tire pressure under the standard should be extended to at least 20 minutes. Hyundai stated that delivery frequency for data from the direct TPMS tire pressure sensor to the main control unit can take as long as three minutes, which is a function of Federal Communications Commission (FCC) requirements [23] that limit signal transmissions and the capacity of the battery in the sensor. In addition, Hyundai stated that a number of transmissions may be required to correctly diagnose low tire pressure. Therefore, if a wireless data error occurs, Hyundai argued that the TPMS may not be able to gather sufficient data within the NPRM's proposed 10-minute time limit to assess the vehicle's tire pressures. Accordingly, Hyundai argued that the final rule should permit at least 20 minutes for low tire pressure detection in order to give the TPMS sufficient time to gather enough data to make an accurate assessment.

Volkswagen of America, Inc., Volkswagen AG, and Audi AG (VW/Audi) commented that in order to overcome the technology-limiting requirements of the NPRM, the final rule should permit a driving time of up to one hour for the low tire pressure warning, a time period consistent with detecting the unlikely situation where all four tires become under-inflated due to slow air leakage or changes in ambient temperature.

In contrast, other commenters argued that the NPRM's 10-minute under-inflation detection time is too long and should be reduced. Public Citizen argued that the requirement for under-inflation detection time should be reduced to one minute in the final rule, because direct TPMSs can meet such a requirement. Public Citizen stated that in proposing a 10-minute under-inflation detection requirement, NHTSA has unjustifiably lowered the bar in order to accommodate more manufacturers (*i.e.*, to permit indirect TPMSs requiring a longer time period for detection).

ETV commented that the TPMS should be required to activate (and extinguish) its warning within 10 seconds of vehicle start-up in order to prevent the vehicle from entering traffic with a potentially dangerous level of tire under-inflation.

The EC commented that the 10-minute detection time for the low tire pressure warning does not adequately address the tire safety problem, because during this period, the tire(s) may be operated at pressures even lower than 25-percent below the recommended pressure and significant structural damage could occur during that time period. The EC expressed concern that a combination of high speed, a long activation period, and a 25-percent under-inflation detection level could significantly reduce the time available to the driver to take appropriate action. (The European Tyre and Rim Technical Organisation (ETRTO) provided a similar comment.) The RMA similarly objected to the 10-minute activation time period as being unsafe; the RMA argued that, particularly at higher speeds, that activation time would allow the vehicle to travel with under-inflated tires for many miles with excessive heat, over-deflected body cords, and possible structural damage.

According to Emtop Ltd. (Emtop), the NPRM's 10-minute under-inflation detection requirement does not address the 15 percent of incidents of under-inflation caused by rapid pressure drop (Emtop's estimate). Emtop argued that the proposed requirement is dictated by the inability of many current systems to meet a more stringent requirement for detection time. Emtop stated that its TPMSs can detect rapid pressure losses ''in a fraction of a second'' and that the TPMS rule should not create barriers to such high-performance systems.

MLHO, Inc. (MLHO), which has developed a battery-less, non-radio-frequency (RF) TPMS that relies on directional magnetic coupling to send pressure information, commented that there is no need for a TPMS to provide either an under-inflation warning or a malfunction warning while the vehicle is stationary. (In simple terms, in the MLHO TPMS system, wheel rotation powers the transmitter.) The commenter argued that a very flat tire will be obvious to the driver or will trigger the warning before the vehicle has traveled a significant distance. As to the malfunction indication, MLHO argued that since a TPMS malfunction does not constitute an emergency, the malfunction need not to be detected prior to vehicle movement.

Instead, MLHO recommended that the proposed detection requirements in S4.2 of the NPRM should be revised to require the TPMS to detect the significantly under-inflated tire(s) and to illuminate the low tire pressure telltale within 10 minutes after the vehicle is in motion within the standard's designated speed range. MLHO requested that NHTSA also include language in S4.2 to specify that the TPMS will not be expected to either illuminate or extinguish the low tire pressure telltale without the vehicle being in motion, as motion is necessary for some systems to assess the vehicle's tire pressure status.

MLHO stated that as currently proposed, the NPRM imposes unnecessary design restrictions, favors the ''present dominant RF-based technology,'' and discriminates against small businesses.

NHTSA has carefully considered the commenters' countervailing arguments regarding the time limit for the TPMS to detect a significantly under-inflated tire, and we have decided to modify the relevant requirement in this final rule. As revised, under S4.2 of the standard, the TPMS must illuminate a low tire pressure warning telltale not more than 20 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less

[23] *See* 47 CFR 15.231.

than the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding tire type, whichever is higher. We believe that this detection time period is appropriate for the following reasons.

As noted in the agency's June 5, 2002 **Federal Register** notice, TPMSs were not developed to warn the driver of extremely rapid pressure losses that could accompany a vehicle encounter with a road hazard or a tire blowout.[24] According to the tire industry, those types of events account for approximately 15 percent of pressure loss cases.[25] Arguably, a driver would be well aware of the tire problem in those situations, and the TPMS would provide little added benefit. Instead, TPMSs' benefits lie in warning drivers when the pressure in the vehicle's tires is approaching a level at which permanent tire damage could be sustained as a result of heat buildup and tire failure is possible; this low level of inflation pressure generally results from a more measured pressure loss (produced over weeks or months) caused by a slow leak, defective valve, or diffusion. According to the tire industry, approximately 85 percent of all tire pressure losses are slow air losses that occur over hours, weeks, or months of vehicle use.[26] In those cases, a detection time of 20 minutes is not likely to pose a safety risk to the driving public.

The agency's tire research suggests that even in a 25-percent under-inflated condition, the vehicle can be operated safely for this detection period without an appreciable risk of tire failure. Specifically and as noted above, NHTSA conducted testing on a variety of Standard Load P-metric tires at 20 psi with 100-percent load at 75 mph for 90 minutes on a dynamometer, and none of these tires failed.[27] This testing led the agency to conclude that warnings at less severe conditions will give drivers sufficient time to check and re-inflate their vehicles' tires before the tires experience appreciable damage. Commenters advocating a reduced detection time did not provide any evidence to demonstrate that operation of the vehicle with one or more tires under-inflated by 25 percent leads to tire damage or tire failure. Although manufacturers are encouraged to provide the low tire pressure warning as quickly as possible, we believe that a 20-minute detection period is unlikely to result in any adverse safety consequences.

We further believe that a change in the detection time is necessary in order to articulate a standard that is practicable and technology-neutral. According to manufacturers' comments, even direct TPMSs will require additional time to detect and verify low tire pressure, in part as a result of FCC regulations limiting the frequency of electronic transmissions.

Furthermore, we anticipate that the extended time period also will ease compliance for indirect systems (particularly when detecting multiple under-inflated tires). Most indirect and hybrid TPMSs cannot currently meet the four-tire, 25-percent under-inflation detection threshold within 20 minutes. However, we are aware of at least one indirect TPMS that is currently capable of doing so,[28] and we expect that with additional time and effort, other indirect and hybrid systems also would be able to meet the requirements of the standard.

In sum, without an extension of the time period for low tire pressure detection and warning, the number of TPMS technologies available for use under the standard may be significantly curtailed. Available information does not demonstrate a safety need for imposing such limitations, and we believe that drivers would operate the vehicle for 20-minutes periods with some frequency. For these reasons, we believe that a 20-minute detection time period is both practicable and meets the need for motor vehicle safety.

We have decided not to extend the low tire pressure detection time beyond 20 minutes, however, as requested by some manufacturers in their comments. Available research shows that 75 percent of commuters regularly experience commute times of 30 minutes or less.[29] A recent study by the U.S. Census Bureau, using 2002 survey data, found that average commute times for most major U.S. cities range from 20 to 30 minutes.[30] Many other trips, such as routine errands, may also involve drive times of less than 30 minutes. Therefore, if we were to require a low tire pressure detection time of 30 minutes or more, it is conceivable that consumers could be driving on significantly under-inflated tires for a potentially extended period of time without receiving a warning from the TPMS.

In addition, we are concerned that extending low pressure detection time period beyond 20 minutes could be problematic in other situations. For example, where a tire is punctured by a nail or is otherwise damaged and may experience a moderately rapid pressure loss. As to damaged tires but experiencing a relatively less rapid pressure loss, research into the rate of temperature buildup shows that for constant load, pressure, and speed conditions, tires generally warmed up and stabilized their temperatures within 15 minutes of testing;[31] thus, the tire will rapidly reach a temperature that places stress on an under-inflated tire. In both of those cases, we are concerned that a 30-minute detection time could delay the warning to the driver too long. For these reasons, we have decided that a requirement that would permit a low tire pressure detection time longer than 20 minutes could diminish the overall utility of the TPMS and concomitantly reduce the safety benefits associated with that system.

In response to the concerns of MLHO, it was never the agency's intention to require detection absent vehicle motion. As demonstrated by the standard's test procedures, the detection time for low tire pressure includes a period of vehicle operation within a designated speed range (*see* S6(f)). This provision for vehicular motion is already built in to the general requirements of S4.1, which provides that the TPMS must meet the detection requirements of S4 under the test conditions specified in S5 and the test procedures specified in S6 of the standard. We believe that no further modifications to the standard are necessary related to this point.

2. TPMS Malfunction Indicator Lamp (MIL) Activation Requirements

Paragraph S4.4 of the NPRM proposed to require each covered vehicle to be equipped with a TPMS that includes a telltale that illuminates whenever there is a malfunction that affects the generation or transmission of control or response signals in the TPMS and extinguishes when the malfunction has been corrected.

The NPRM's proposed requirement for a TPMS Malfunction Indicator Lamp (MIL) was not included in earlier rounds of the TPMS rulemaking process. Consequently, the agency

[24] 67 FR 38704, 38728 (June 5, 2002).

[25] *Id.*

[26] *Id.*

[27] *Id.* at 38726.

[28] Docket No. NHTSA–2004–19054–96.

[29] This statistic is based upon the results of a Washington Post-ABC News-Time poll conducted by telephone from January 27–31, 2005 among 1,204 randomly selected adults nationwide. Results of this poll were reported in the *Washington Post* on February 13, 2005, at page A1.

[30] *See http://www.census.gov/acs/www/Products/Ranking/2002/R04T160.htm.*

[31] *See* June 5, 2002 comments of the Rubber Manufacturers Association (Docket No. NHTSA–00–8011–64).

expected and did receive extensive public comment on this proposed provision. Commenters offered recommendations regarding how quickly the TPMS must detect system malfunctions, the types of functions to be detected, and the test procedures for detecting such malfunctions. Each of these topics will be discussed in turn.

(a) *Time Period for Malfunction Detection.* The NPRM did not specify a time period for the TPMS to detect a malfunction and to illuminate the TPMS MIL.

The Association of International Automobile Manufacturers, Inc. (AIAM) expressed concern that the NPRM would require detection and notification of a TPMS malfunction immediately upon occurrence. However, AIAM stated that immediate detection is not possible in most cases, because TPMSs generally require the vehicle to be in motion in order to detect a malfunction (an argument also raised by Honda Motor Co., Ltd. and American Honda Motor Co., Inc. (Honda) and EnTire), and several transmissions from the pressure sensor to the controller are required to validate the existence of a malfunction.

AIMA stated that the FCC requires a pause between signal transmissions at least 30 times as long as the signal transmission itself. In addition, AIMA stated that interference may result in the loss of some of these signals. AIMA argued that a requirement for immediate detection and reporting of a TPMS malfunction could result in many false positive warnings, which could undermine consumers' faith in the system and potentially lead them to ignore TPMS-related warnings (an argument repeated by General Motors North America (GM) and Hyundai in their comments). In light of the above, AIMA recommended that the agency allow the TPMS between 30 and 60 minutes to determine with a high degree of certainty whether a true malfunction is present (*e.g.*, not one caused by signals external to the vehicle). The Alliance made a similar comment, suggesting a 30-minute detection time for a malfunction.

Several other commenters also recommended that the agency specify a time period for the detection of a TPMS malfunction, although the recommended time periods varied. For example, ALPS Automotive, Inc. (ALPS) and Honda commented that a TPMS cannot detect malfunctions any faster than the system can detect low tire pressure and that the same durational parameters should be set for both functions. ALPS, BERU, Schrader Electronics, Ltd. (Schrader), and Fuji Heavy Industries USA, Inc. (Fuji) each recommended a 10-minute detection time. BERU stated that it does not support an ''excessive[ly] long'' duration for TPMS malfunction detection, because an extended ride (even 20 minutes) with a defective TPMS or an incompatible tire could prevent a low pressure warning and lead to a tire blow out. BERU also recommended specification of a vehicle moving distance. BERU stated that specifications for ''duration'' and ''vehicle moving distance'' are necessary not only for the detection of a malfunction, but also for the validation of the correction of a malfunction.

EnTire and Hyundai recommended a malfunction detection time of 20 minutes. According to EnTire, if a pressure sensor is disabled, it can take over 13.5 minutes for the fault to ''mature'' and to be detected by the system and suggested 20 minutes as a reasonable detection time. (EnTire also suggested 20 minutes as a reasonable extinguishment time for the MIL, and Fuji recommended that a vehicle be driven at least 10 minutes at a minimum of 40 kph in order to verify that the malfunction has been eliminated.) Hyundai commented that current direct TPMSs are designed so that a failure is recognized only when the control unit does not receive data from the pressure sensor for three to four consecutive delivery cycles. Hyundai stated that current systems, therefore, require approximately 20 minutes to properly detect and verify TPMS malfunctions, a time period consistent with minimization of nuisance warnings.

GM recommended a 30-minute drive time for TPMS malfunction detection. GM stated that the MILs for its current TPMSs have a 25-minute drive period for the detection threshold, and the company is not aware of any consumer complaints arising from delayed TPMS malfunction warnings. GM argued that a TPMS that is programmed to be highly reactive in terms of malfunction detection and that provides an immediate response may result in relatively frequent malfunction warnings because common, everyday occurrences are likely to temporarily disturb the TPMS's signals.

MLHO stated that the regulatory text related to the TPMS malfunction detection requirement should be revised to focus on the detection of a malfunction or correction of a malfunction, rather than the occurrence of those events. MLHO's comment is related to those about the need for the system to have adequate time to detection the presence or absence of a malfunction.

DaimlerChrysler Corporation (DaimlerChrysler) made a general argument that NHTSA has not calculated or otherwise demonstrated any significant safety benefits associated with the TPMS MIL.

Based upon the information provided by the commenters, we have decided to modify our approach to the MIL by providing a time period for malfunction detection and a speed range in which the vehicle will be driven as part of the malfunction detection phase in the test procedures. Specifically, this final rule requires the TPMS to detect a malfunction and to illuminate the MIL within 20 minutes of the occurrence of a malfunction, when the vehicle is driven at a speed between 50 km/h and 100 km/hr.

Several commenters have stated that TPMSs generally require the same amount of time to detect and to verify a malfunction as they do for low tire pressure. As discussed above, the detection time period for low tire pressure has been increased to 20 minutes. A number of commenters stated that 20 minutes would provide adequate time for TPMS malfunction detection, with some commenters recommending an even shorter time period (*e.g.*, 10 minutes). We also believe that specifying a time period for detection addresses MLHO's comment that the standard should not imply a requirement for automatic illumination of the MIL as soon as a malfunction occurs.

We understand that certain TPMS technologies require vehicular motion in order to diagnose a TPMS malfunction, which is similar to the way in which such systems detect low tire pressure. For that reason, we are now specifying in the standard's test procedures that the vehicle will be driving within a designated speed range during the malfunction detection phase.

We see important benefits in including a MIL requirement as part of the final rule. First, the malfunction detection requirement is intended to ensure the long-term functionality of the TPMS by identifying those small number of replacement tires with construction characteristics that would prevent proper operation of the TPMS. Without the TPMS MIL, some drivers would lose the benefit of the low tire pressure warning to be provided by the TPMS. The malfunction indicator was recommended by the Alliance as a solution to this problem. In addition, the MIL could provide ancillary benefits by alerting the driver of other situations where the system becomes non-operational; in some cases, the problem may be temporary (*e.g.*, brief signal

disturbance), but in other cases, the MIL may signal the need for repair of the TPMS. In all these cases, it is useful to the driver to be aware that the system is unavailable to provide a low tire pressure warning.

However, with the above said, we do believe that the above accommodations can be made without any significant decrease in safety benefits. A TPMS malfunction does not itself represent a safety risk to vehicle occupants, and we expect that the chances of having a TPMS malfunction and a significantly under-inflated tire at the same time are unlikely. Even if that is the case, we do not believe that a 20-minute detection time would increase occupant risk appreciably.

(b) *What Constitutes a TPMS Malfunction?* The NPRM proposed to require the MIL to illuminate ''whenever there is a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system'' and to extinguish when such malfunction is corrected (S4.4(a)).

A number of commenters argued that proposed malfunction requirement is overly broad and in need of modification. The Alliance, the organization that originally suggested consideration of a TPMS MIL, stated that it remains committed to providing an in-vehicle indication when there is inadequate signal reception from one or more TPMS sensors. However, the Alliance stated that the technical specifications for the MIL proposed in the NPRM are different than the MILs that Alliance members were expecting and, in some cases, are inconsistent with the MILs that manufacturers are already voluntarily providing.

Fuji stated that although it is reasonable to require malfunction detection for components that sense and transmit tire inflation pressure data, the standard should only require malfunction detection and warning in three situations: (1) When there is inadequate (or no) input signal from the wheel sensors; (2) when there is inadequate (or no) input signal from the antenna to the electronic control module (ECM), or (3) when there is inadequate (or no) input signal from other systems used by the malfunction warning system (*e.g.,* ABS wheel speed input to the ECM). Fuji stated that malfunctions in the TPMS ECM (which contains the logic to determine that a malfunction exists) would be impossible to indicate via the MIL, because the module would not be functioning to operate the lamp.

Sumitomo commented that paragraph S4.4, as proposed, should be modified to require the TPMS to indicate a malfunction under the following two conditions: (1) When wheel speed signals cannot be transmitted from wheel speed sensors to the TPMS, and (2) when tire pressure signals cannot be transmitted from the pressure sensors to the TPMS.

ETV stated that the MIL should indicate the following malfunctions: (1) Incompatibility of replacement tires/rims; (2) sensor failure; (3) signal failure in communications channel; (4) reader electronics failure, and (5) telltale bulb failure. ETV argued that there should be a redundancy or failsafe built into the system so that a burnt out telltale bulb can still produce a malfunction warning, so as to alert the consumer that that bulb needs replacement.

Hyundai stated that there are three types of TPMS malfunctions that will require addition of a separate electrical circuit to activate the MIL: (1) Disconnection of the power source to the main control unit; (2) disconnection of the power source to the telltale lamp, and (3) disconnection of wiring between the main control unit and the telltale lamp. Hyundai requested that the agency exclude these three malfunctions from the requirements of the standard during the phase-in period, because incorporating detection capabilities for these types of malfunctions would require additional development time. Alternatively, Hyundai suggested that detection of these conditions could be achieved through the bulb check function and supplemental language in the owner's manual; in those cases, the TPMS lamp would not be illuminated during the bulb check, and the driver would consult the owner's manual to be alerted to the TPMS malfunction in such cases.

In addition, Hyundai stated that even though components such as the electronic control unit (ECU) or vehicle speed sensors are involved in TPMS operation, failure of these components should not be considered a TPMS malfunction. Mitsubishi stated that the MIL should not be required to provide a warning during brief interruption of communication between sensors and the ECU because the TPMS uses radio communications that can be affected by external interference; this is a common occurrence that could result in false positive warnings. GM made a similar point about not requiring the TPMS MIL to illuminate during brief and temporary interruption of signals.

The comments of American Suzuki Motor Corporation (Suzuki) discussed the malfunction detection capabilities of the TPMS currently installed on the Suzuki XL–7. According to Suzuki, that system provides a malfunction indication when there is either a loss of power to the TPMS control unit or when there is no electrical connection between the control unit and the TPMS telltale. Suzuki stated that although its system is not compliant with the NPRM's proposed MIL requirements, it believes that its system is just as effective as the MIL technical specifications in the NPRM. Therefore, Suzuki requested that NHTSA adopt ''less design-restrictive'' requirements for the TPMS MIL, so as to allow continued use of its system.

NIRA Dynamics commented that it is important to keep the malfunction indicator requirements generic, so that any TPMS technology may be used. As examples of limitations specific to certain types of TPMS technology, NIRA Dynamics stated that: (1) Many direct systems cannot detect a malfunction when the vehicle is stationary if the sensor does not have any contact with the receiver due to wheel angle; (2) it is impossible for indirect systems to detect a malfunction when the vehicle is stationary because the wheel must rotate to diagnose the sensor, and (3) indirect systems cannot detect tire incompatibilities. NIRA Dynamics urged that the final rule should simply require TPMSs to be designed to detect malfunctions ''according to good engineering practices.''

Honda's comments sought confirmation that the following system failures would be excluded from the TPMS MIL activation and warning requirements: TPMS indicator light, TPMS coupler, and meter panel. Honda argued that it would be unnecessary for the TPMS MIL to report these failures because they would be apparent upon bulb check. Honda also requested that the agency issue a laboratory test procedure for generating a TPMS system fault, so as to clear up any confusion related to the types of malfunctions that will be subject to testing.

Continental Teves, Inc. (Continental Teves) also commented that for a hybrid system, it would not be possible for the TPMS to illuminate the MIL to indicate an incompatible tire unless it is on a wheel with a pressure sensor. Continental Teves stated that the TPMS MIL should not be required to illuminate when an incompatible replacement tire is installed, but instead, the system should be permitted to continue to function with reduced performance without the MIL being lit. BMW also stated that the TPMS MIL should not be required to illuminate when system failure is the result of a change to an incompatible tire, because

such failure is not the result of a malfunction of the TPMS.

Schrader commented that the TPMS should not be required to signal a malfunction when the ignition locking system is in the lamp-check position, because that status check should be reserved for confirming the functionality of the telltale bulb.

After careful consideration of the public comments, we have decided to retain the NPRM's requirement for the MIL to illuminate whenever there is a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system. Although the commenters expressed preferences for TPMSs with reduced malfunction detection capabilities, they did not state that it would be impracticable to provide the proposed warnings. Furthermore, we believe that, given adequate lead time, this requirement is practicable, because a nearly identical malfunction requirement for anti-lock braking systems (ABS) is contained in FMVSS No. 121, *Air Brake Systems,* and vehicle manufacturers have certified to that standard successfully. We expect that manufacturers would similarly be able to meet the malfunction detection requirements of the TPMS standard.

As drafted, the TPMS malfunction detection requirement is technology-neutral and capable of accommodating system design changes without the need to continually amend the standard. For example, in a direct TPMS, the control signals are generated by the wheel sensor and transmitted to an electronic control unit via an antenna. In contrast, in an indirect TPMS, the control signals may be generated by the ABS wheel sensor and transmitted to the electronic control unit directly. The present requirement encompasses both types of systems.

In response to comments suggesting that the TPMS MIL should only detect specific malfunctions, the agency believes that such restrictions would unnecessarily reduce the safety benefits of the TPMS. Specifications in the standard that would limit malfunctions that must be detected could impose design restrictions on manufacturers because such specifications and the components to which they refer may not be applicable to current or future TPMS designs. The agency recognizes that the requirement for malfunction detection includes all TPMS components and may require some additional circuitry and software, but we believe that with minor modifications, it would be practicable to monitor all TPMS components for malfunction. Therefore, we are not adopting the specific limitations recommended by the commenters.

We agree with the comment of Schrader that the MIL should not be required to signal a burned out bulb as a TPMS malfunction, because that problem would already be identified during the check-of-lamp function at vehicle start-up.

As discussed previously, we recognize that most TPMSs require vehicular motion in order to detect a system malfunction, so we have incorporated a 20-minute drive time in a designated speed range as part of the standard's test procedures for malfunction detection.

We do not agree with the comments stating that the MIL should not be required to illuminate during periods of brief external signal disturbance. The TPMS is unlikely to know for how long a signal disturbance will continue. Instead, we believe that the driver should be provided a warning that the TPMS system is unavailable to detect low tire pressure. This situation is not a false positive, but instead, it involves a period when the TPMS is unavailable, although through no fault of its own. Once the period of signal disturbance passes, the TPMS should detect that the problem has been resolved and extinguish the MIL, and no additional action on the part of the driver would be required.

In addition, during periods of brief disturbance, the TPMS's circuitry and software may require time to detect a malfunction, and the MIL telltale may ultimately not illuminate. As discussed above, we are requiring the TPMS to detect a malfunction and to illuminate the TPMS MIL within 20 minutes of the occurrence of such malfunction. This time period for detection should provide the system with an adequate opportunity to determine whether the disturbance is, in fact, brief before illuminating the MIL.

We also disagree with commenters who suggested that the TPMS MIL should not be required to signal when the vehicle is equipped with alternate or replacement tires that prevent continued proper functioning of the TPMS. That requirement is key to the long-term functionality of the TPMS, and unless such a warning is provided, some drivers may lose the benefits of the system entirely. It is plainly foreseeable that most vehicles will outlast their original set of tires, so this requirement is necessary to ensure that consumers continue to receive the TPMS's important information related to low tire pressure.

In response to Honda's comment that the agency should rapidly issue a laboratory test procedure for generating a TPMS system malfunction, we would offer the following clarification and cautionary note. It is our intention to publish guidelines to test facilities that the agency contracts with to conduct compliance testing in the near future. These guidelines are referred to as compliance test procedures, and they are intended to provide a standardized testing and data recording format among the various contractors that perform testing on behalf of the agency, so that the test results will reflect performance characteristics of the product being tested, not differences between the various testing facilities. However, we would stress that vehicle manufacturers' certification responsibilities are linked to the requirements, test procedures, and test conditions articulated in the standard, not the laboratory test procedures.

(c) *MIL Disablement.* The NPRM did not contain any provision for MIL disablement.

Honda requested clarification as to whether it would be permissible to disable or to suppress the MIL when the TPMS sending units have been removed as a result of the replacement of the original equipment tires and rims with aftermarket components that are not compatible with the direct-sensing TPMS. Honda stated that it had previously received complaints from customers and dealers who encountered this situation and were confronted with a recurrent malfunction warning. The company expressed concern that if the MIL cannot be suppressed in these situations, consumers may become desensitized to MILs generally, which could have negative implications for occupant safety. NADA provided a similar comment.

We do not believe it is appropriate to permit disablement of the MIL when aftermarket tires and rims are installed on the vehicle that are not compatible with the continued proper functioning of the TPMS. In such cases, the TPMS MIL is performing its intended function. We believe that the MIL should continue to operate when tires and rims that are incompatible with the TPMS are mounted on the vehicle, not only to discourage such actions, but also to provide an ongoing reminder that the TPMS is unavailable to provide low tire pressure warnings.

3. Telltale Requirements

The NPRM proposed to require installation of either a single TPMS telltale (i.e., a combination telltale indicating both low tire pressure and system malfunction) or separate telltales

for low tire pressure and malfunction indication.

For the low tire pressure warning, paragraph S4.3 of the NPRM proposed to require a telltale that is mounted inside the occupant compartment in front of and in clear view of the driver, which is identified by one of the symbols for ''Low Tire Pressure Telltale'' in Table 2 of FMVSS No. 101, *Controls and Displays,* and is illuminated under the conditions specified in S4.2. For low tire pressure telltales that identify which tire(s) is (are) under-inflated, the NPRM proposed to require that each tire in that symbol must illuminate when the tire it represents is under-inflated to the extent specified in S4.2. That paragraph also proposed to require the low tire pressure telltale to illuminate during a check-of-lamp function, and stated that the telltale would not be required to illuminate when a starter interlock is in operation.

For the TPMS MIL, paragraph S4.4 of the NPRM proposed two options for compliance. As the first option, under S4.4(b), a vehicle manufacturer could install a dedicated TPMS malfunction telltale that is mounted inside the occupant compartment in front of and in clear view of the driver, which is identified by one of the symbols for ''TPMS Malfunction Telltale'' in Table 2 of FMVSS No. 101, and is continuously illuminated under the conditions specified in S4.4(a). That paragraph also proposed to require the MIL to illuminate during a check-of-lamp function, and stated that the telltale would not be required to illuminate when a starter interlock is in operation.

As the second option, under S4.4(c), a vehicle manufacturer could install a combined Low Tire Pressure/TPMS Malfunction telltale that continues to meet the low tire pressure detection requirements of S4.2 and S4.3 and meets the MIL requirements of S4.4(a) in the following fashion. The NPRM proposed to require the combined telltale to flash for one minute upon detection of any malfunction condition specified in S4.4(a) after the ignition locking system is turned to the ''On'' (''Run'') position. After the first minute, the telltale would be required to remain continuously illuminated as long as the malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. The NPRM proposed that this flashing and illumination sequence would be required to be repeated upon subsequent vehicle start-ups until the situation causing the malfunction has been corrected, after which time the telltale must extinguish.

(a) *Function and Format of the Combined Low Pressure Warning/ Malfunction Indicator Lamp.*

A number of commenters discussed the issue of how the MIL would operate, particularly when it is combined with the low pressure warning telltale. No consensus was evident, as reflected by the variety of viewpoints in the following discussion of comments.

Some commenters argued that the proposed requirements for the TPMS MIL are design-restrictive and may impose unnecessary costs. In its comments, AIAM opposed the use of a flashing low pressure telltale to indicate TPMS malfunction when the MIL is part of a combined format, because such a format may require significant software and hardware changes. AIAM stated that a separate MIL will not be feasible for many vehicles, and that the NPRM's limited MIL design options would restrict a number of potentially innovative solutions (*e.g.*, voice malfunction indicators, other visual or text messaging displays).

AIAM argued that NHTSA instead should include a technology-neutral requirement for a MIL, but leave MIL design to the discretion of the vehicle manufacturer. Porsche Cars North America, Inc. (Porsche) argued that there is no evidence that clear and concise text messages create confusion, and the company recommended that the final rule permit text messages related to TPMS malfunction and permit those messages to be cleared by the driver (but not permit clearing of the low pressure telltale). The Alliance, BMW, DaimlerChrysler, and VW/Audi all expressed similar views regarding allowing design freedom for MILs with a mix of product offerings. Suzuki suggested that manufacturers should be permitted to explain how different malfunctions are identified in the vehicle owner's manual.

DaimlerChrysler stated that its experience has shown TPMS malfunctions to be uncommon events, and therefore, detailed MIL specifications are not warranted because they do not address a significant safety problem or provide a significant safety benefit. DaimlerChrysler argued that it should be sufficient to have the final rule that the malfunction indicator ''be present, visible to the driver, perceptually upright, and explained in the owner's manual.''

Others were concerned that the flashing-to-steady-burning MIL could lead to consumer confusion. The Alliance questioned whether having the combined telltale flash for one minute and then become steady burning to indicate a malfunction would confuse consumers as to whether a malfunction or a low tire pressure condition exists. More specifically, Hyundai stated that the initial one-minute flashing sequence may be an insufficient period of time, because, particularly at vehicle start-up, the driver may be preoccupied with other tasks and may not notice the flashing telltale until it becomes steady-burning, at which time it may be misconstrued to be a low pressure warning (a similar comment was provided by Emtop). Hyundai recommended that NHTSA either consider other alternatives (*e.g.*, periodic flashing) or an extension of the one-minute time period for the initial flashing. The comments of Mitsubishi Motors R&D of America, Inc. (Mitsubishi) and the TIA shared this view. DaimlerChrysler, Mitsubishi, and Nissan North America, Inc. (Nissan) went even further in their comments and suggested a continuously flashing TPMS MIL, which would be distinct from the continuous warning for low tire pressure.

TIA also expressed concern that even if the driver does notice the initial flashing sequence of the combined TPMS telltale, that person still may not comprehend its significance, instead misconstruing it as part of normal vehicle start-up. According to TIA, if that were the case, even a more detailed explanation in the owner's manual would be insufficient because the driver may never realize the need to consult it. TIA also commented that a separate TPMS MIL telltale would add yet another light to an already crowded dashboard. (BMW and Porsche provided similar comments.) BMW commented that a combined telltale would preserve space for future safety-related technologies and warnings.

Porsche argued that the 60-second flashing format for the proposed combined telltale is unwarranted and a potentially dangerous way to signal a TPMS malfunction. According to Porsche, a flashing telltale would send an incorrect message to the driver that something is seriously wrong with the vehicle, potentially alarming the driver and leading to a panic situation that could distract the driver's attention from driving.

In contrast, Emtop argued that there is not any evidence to suggest that flashing telltales produce inappropriate driver responses or that the intended messages are misunderstood, unless the indication is inconsistent.

Fuji's comments suggested that the form of the MIL warning should depend upon the type of malfunction encountered. More specifically, Fuji stated that malfunctions in the TPMS

ECM (which contains the logic to determine that a malfunction exists) would be impossible to indicate via the MIL, because the module would not be functioning to operate the lamp. Fuji recommended that the MIL should flash as long as the malfunction exists in components ''downstream'' of the ECM (*e.g.*, loss of signal from a wheel sensor) but that the MIL should have continuous illumination for malfunctions of components ''upstream'' of the ECM (*e.g.*, wiring harness to telltale, loss of power to the ECM). Fuji stated that this hierarchy would not apply to situations where the TPMS failed the bulb check.

NADA stated that the TPMS could use a single warning lamp to indicate a variety of conditions (*i.e.*, low tire pressure, incompatible tires, TPMS malfunction). Under the approach recommended by NADA, when the telltale is illuminated, the owner would consult (at least the first time) the following decision tree provided in the vehicle owner's manual in order to determine the meaning of that illumination: (1) There is an inflation concern. Check tire pressures. If okay, proceed to (2); (2) A tire is incapable of being monitored. Check tires. If okay, proceed to (3); (3) The system is faulty. See your motor vehicle dealer. NADA stated that the final rule should include a requirement for owner's manual language consistent with its recommended approach.

Emtop commented that having separate TPMS telltales for low tire pressure and the malfunction indicator is inadvisable because an additional telltale is costly, would consume limited display space, and would provide little or no additional safety benefit. In contrast to earlier commenters, Emtop argued that having separate telltales would confuse drivers and undermine confidence in the TPMS, and it also argued that allowing a choice in format could further confuse consumers who drive multiple vehicles when they encounter systems with different indicators.

In addition, Emtop recommended reversing the NPRM's approach to the low pressure and MIL warning signals, urging the agency to require the telltale to flash to indicate low tire pressure and to be continuously illuminated to indicate a TPMS malfunction. According to Emtop, a flashing telltale is more likely to be noticed and implies a potential danger, so in this case, Emtop recommended requiring the telltale to flash continuously to indicate low tire pressure, a potentially serious condition which is relatively easy for the driver to correct. (Honda provided a similar comment.) Emtop also recommended this approach because a flashing malfunction indicator would require a control signal that may be unable to produce the requisite flashing if the malfunction affects the control signal itself; according to Emtop, indicating a malfunction in a steady state would be more appropriate because an indicator can be made to default to a fixed state in the absence of a control signal.

In its comments, Emtop also questioned the message conveyed by a flashing-to-steady MIL, which it argued may be confusing, counter-intuitive, and context dependent. According to Emtop, drivers may equate a change in the indicator with a change in condition. Emtop also suggested that the messages in a combined telltale could be confused in situations where low tire pressure is masked by the malfunction warning or where a low pressure warning flickers (*e.g.*, due to fluctuating pressure causing the light to turn on and off), problems which may increase as future TPMS technology reduces system reaction time.

Emtop recommended specifying a flash rate of one to three times per second, noting that the flash rate could be changed to convey a greater sense of urgency to the driver if the situation deteriorates without being remedied. Emtop stated that its TPMSs already have a progressive flash rate that has been tested and well received by consumers. (EnTire and Honda also recommended specification of a flash rate for the 60-second flashing malfunction indication, as well as a tolerance for the 60-second period. EnTire recommended a tolerance for the 60-second period of ± 10 seconds, whereas Honda recommended a tolerance of ± 5 seconds.)

Public Citizen urged the agency to mandate separate warning indicators for low tire pressure and TPMS malfunction because a combined telltale could be confusing, particularly for older drivers who may have poorer vision and slower reaction times. (Advocates provided a similar comment.) Public Citizen argued that both warning telltales should be required to flash until the underlying problem is corrected. The organization stated that flashing telltales convey a sense of urgency and are more likely to elicit a driver response, and it suggested that a flashing indicator could be programmed to provide additional information, such as by flashing more frequently at increasingly lower pressure levels. Public Citizen argued that the agency has provided no support for a determination that flashing telltales are a nuisance or otherwise unacceptable.

BERU requested clarification of whether the MIL should be illuminated while the system is running validation protocols to determine whether a problem has been corrected. (Presumably, this question applies to both combined and separate TPMS MILs.)

EnTire sought clarification as to whether vehicles that are equipped with both of the proposed low tire pressure telltales (*i.e.*, the single symbol and the symbol showing individual tires) are required to have both symbols indicate a TPMS malfunction per the defined procedure or whether the MIL may be incorporated in only one of those telltales.

After considering the public comments and all available information, we have decided to retain the NPRM's general approach to the telltale requirements for both the low tire pressure warning and the TPMS malfunction indicator (with minor modifications), because we believe that this approach provides an effective message to virtually all drivers. As part of this final rule, we have decided to permit use of either separate telltales for the low tire pressure warning and the TPMS malfunction indicator, or a combined telltale that incorporates both functions. We believe that a visual telltale is necessary to provide a clear and consistent message to the driver. We do not believe that other suggested alternatives (*e.g.*, audible or text messages) would be as effective in providing those warnings. Furthermore, we are concerned that leaving the MIL to manufacturer discretion could result in a proliferation of warnings that may not be sufficiently noticeable or understandable to drivers. We believe that these warnings are extremely important in terms of providing tire pressure information to drivers or of alerting drivers when the systems is not available to provide such information. However, manufacturers may supplement the required warnings with these additional messages.

The agency's cost-benefit analysis does not support a mandatory requirement for separate telltales, and we acknowledge that with limited space available on the dashboard, a combined telltale has the potential to preserve precious space for future safety warnings. However, we believe that there is sufficient justification for separate warnings to warrant permitting manufacturers to use separate warning telltales if they elect to do so. We believe that providing these two different compliance options offers

manufacturers greater flexibility in terms of their designs without sacrificing the important safety messages related to the TPMS.

If the manufacturer chooses the option for separate telltales, the final rule requires a low tire pressure telltale that is mounted inside the occupant compartment in front of and in clear view of the driver, which is identified by one of the symbols for ''Low Tire Pressure Telltale'' in Table 2 of FMVSS No. 101, and is illuminated under the conditions specified in S4.2. For low tire pressure telltales that identify which tire(s) is (are) under-inflated, the final rule requires that each tire in that symbol must illuminate when the tire it represents is under-inflated to the extent specified in S4.2. That paragraph also requires the low tire pressure telltale to illuminate during a check-of-lamp function, and states that the telltale is not required to illuminate when a starter interlock is in operation.

For the dedicated MIL, under S4.4(b), the final rule requires the vehicle manufacturer to install a TPMS malfunction telltale that is mounted inside the occupant compartment in front of and in clear view of the driver, which is identified by the word ''TPMS,'' as described under TPMS Malfunction Telltale'' in Table 2 of FMVSS No. 101, and is continuously illuminated under the conditions specified in S4.4(a). That paragraph also requires the MIL to illuminate during a check-of-lamp function, and states that the telltale is not required to illuminate when a starter interlock is in operation.

For the combined low tire pressure warning/MIL option, the final rule requires that the telltale must meet the low tire pressure detection requirements of S4.2 and S4.3 and also meet the MIL requirements of S4.4(a) in the following fashion. Upon detection of any condition specified in S4.4(a) after the ignition locking system is turned to the ''On'' (''Run'') position, the combined telltale must flash for a period of 60–90 seconds, after which, the telltale is required to remain continuously illuminated as long as the malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated upon subsequent vehicle start-ups until the situation causing the malfunction has been corrected, after which time the telltale must extinguish.

The final rule's requirement for a 60–90 second time period of flashing of the combined telltale to indicate a TPMS malfunction represents an increase from the NPRM's proposed requirement. We agree with comments that drivers may be distracted by other tasks at vehicle start-up and in some cases may miss a 60-second flashing sequence.[32] However, we remain concerned that drivers may consider a lengthy or indefinite flashing sequence to be a nuisance, which could cause the driver to ignore the safety message. We are also concerned that the flashing telltale should elicit the appropriate driver response. Thus, the final rule's time period for flashing the combined telltale represents the agency's determination as how to best balance these competing concerns. We do not believe that it is necessary to specify a flash rate for the combined telltale, so we leave this matter to the discretion of the vehicle manufacturer.

Although certain commenters objected to the manner in which the low tire pressure and MIL warnings are to be provided, those commenters did not provide any evidence to show that the agency's approach would confuse consumers or that their suggested alternatives would be more effective. The following explains our reasoning in not adopting these suggestions.

The TPMS standard represents a novel case in terms of the agency's use of a telltale. Prior to this final rule, NHTSA has not required a flashing telltale for any of the safety systems in any FMVSS. Although we agree with commenters that a flashing telltale is likely to attract driver attention more quickly than a continuously illuminated telltale, we also must consider the appropriateness of the driver's response to the warning.

As we have discussed at various points in the course of this rulemaking, we do not believe that the TPMS's illumination of the low tire pressure telltale represents an urgent situation requiring immediate correction. As noted above, the agency's tire testing has shown that the vehicle can be operated safely with a tire that is under-inflated by 25 percent without an appreciable risk of tire failure for some reasonable period of time (*i.e.*, at least 90 minutes). If a significantly under-inflated tire does not constitute an urgent situation, a TPMS malfunction is even less likely to represent an emergency situation requiring immediate driver attention. Thus, in the situations that would generate a TPMS-related warning, the desired response would not be to have the driver immediately pull over to the side of busy highway. That is the primary reason why the color yellow was selected for the TPMS telltale(s), rather than red. It is also the reason why we have chosen to require continuous illumination of the dedicated TPMS MIL and to require a limited period of flashing followed by continuous illumination (rather than continuous flashing) of the combined TPMS telltale. Particularly when combined with the color yellow, we do not see any reason to believe that a flashing TPMS MIL telltale, in and of itself, would produce a panic response on the part of the driver. Furthermore, we do not believe it is necessary to require the combined telltale to produce periodic flashing more frequent than upon subsequent vehicle start-ups.

Some commenters suggested reversing the way the warning messages are presented in a combined telltale (*i.e.,* requiring flashing to indicate low tire pressure and continuous illumination to indicate TPMS malfunction). While these arguments are not illogical, we have decided that it is appropriate, in this regard, to retain the approach proposed in the NPRM. We believe that drivers are likely to encounter the low tire pressure warning much more frequently than the malfunction warning. Thus, we believe that this situation should be assigned the continuous illumination format, which represents the norm. The presumably less frequent TPMS malfunction warning is being assigned the flashing-to-continuous illumination format. Although it is arguably true that the low pressure situation would be easier for the driver to correct, we believe that the final rule's approach would minimize the amount of flashing encountered by the driver overall.

We believe that the messages presented by the different compliance options for the TPMS telltale(s) will be clear and apparent to most drivers. However, if any confusion arises, the first time the warning is encountered, the driver would be expected to consult the owner's manual to clarify the matter.

We are not adopting NADA's recommendation to have a single TPMS telltale that would require the driver to run through a hierarchy of diagnostics to determine what type of problem is causing the telltale to illuminate. We envision significant driver frustration with such an approach, particularly in those cases where the telltale remains illuminated after pressure check and

[32] We note, however, that in those cases where the driver does not see the flashing sequence, the anticipated response would be to check and inflate the vehicle's tires. Even if none of the vehicle's tires is ''significantly under-inflated,'' the outcome would be to return the tires to optimal pressure. This outcome would nevertheless be beneficial, although the driver may experience some consternation at the continued illlumination of the telltale. In addition, we do not expect that the driver would miss the MIL's flashing sequence on a regular basis.

correction. This scenario can be avoided by setting a performance requirement that differentiates between low tire pressure situations and TPMS malfunctions.

In response to BERU's request for clarification, we note that the final rule requires the TPMS MIL to remain illuminated until such time as the condition causing the malfunction has been corrected. Accordingly, the MIL must remain illuminated while the system is running any validation protocols to determine whether the problem has been resolved, as the telltale is permitted to extinguish only after the TPMS can confirm that the system is again fully operational.

In response to EnTire's question, if the vehicle manufacturer elects to incorporate both of the TPMS low tire pressure telltales, it is only necessary to include a malfunction indicator in one of those telltales. Requiring both telltales to indicate a malfunction would not only be redundant, but it would also unnecessarily increase the amount of flashing experienced by the driver. We leave it to the manufacturer's discretion to choose in which of the two telltales the MIL should be incorporated.

Regarding Fuji's comment that the MIL should flash in certain circumstances and be continuously illuminated in other circumstances (depending upon the type of malfunction), we have decided not to adopt that recommendation. We are concerned that having different types of malfunction warnings within the same system could lead to consumer confusion. In order to detect malfunctions in all TPMS components, some additional circuitry and software logic may be required, as compared to current designs. We recognize that a failure of the control unit would be difficult to detect without appropriate circuitry and logic. Nevertheless, we believe that such a requirement for a flashing MIL would be practicable and achievable for all types of malfunctions.

(b) *Telltale Symbols for Low Pressure Warning and Malfunction Indication.* Several commenters stated that the proposed symbols for low tire pressure and TPMS malfunction are difficult to distinguish and, therefore, potentially confusing. Emtop argued that to the extent that the symbols are confused, drivers may delay taking the appropriate remedial action, and it further stated that misunderstood telltales could undermine confidence in the TPMS.

In its comments, the Alliance challenged statements in the NPRM indicating that the proposed symbol for the TPMS MIL could be recognized by consumers or that it would help achieve the desired response. The Alliance argued that the TPMS Docket does not provide documentation of the agency's evaluation of possible icons or the results of any focus group evaluation or study of such icons. The Alliance also stated that the proposed MIL icon is not consistent with the approach to other ISO standards, which indicate malfunctions by adding an exclamation point symbol (''!''). Accordingly, the Alliance argued that, in this instance, the MIL would require the addition of another exclamation point (''!'') on the side of the low tire pressure symbol. The Alliance commented that it is not aware of any ISO symbol attributing a meaning to the dashed element found in the NPRM's proposed TPMS MIL symbol, and instead, it suggested an alternate symbol (*i.e.*, the low tire pressure icon with the capital letters ''TPM'' in the middle).

Honda also recommended modifying the proposed TPMS malfunction warning telltale. Honda stated that the proposed malfunction symbol is new and not an internationally recognized symbol for TPMS malfunction, so Honda argued that there is latitude for a change. It recommended using the word ''TPMS'' for the system malfunction telltale. (Hyundai provided a similar comment.)

VW/Audi suggested that for the malfunction indicator, a more meaningful TPMS malfunction symbol might utilize the low tire symbol with a diagonal bar across it, a feature that is generally interpreted as the negative of the underlying symbol.

ETV expressed support for the proposed TPMS telltale that has the outline of a car with lighted indicators at each tire that can provide tire-specific information by referencing its installed location. ETV commented that, as opposed to the proposed ISO telltale design (which ETV referred to as the ''cutaway tire''), the alternate symbol provides a ''common sense'' and readily recognizable symbol for low tire pressure, which would leave the car symbol's roof area available for the TPMS malfunction signal. ETV urged NHTSA to require that the visual telltale be supplemented with an audible alarm.

Advocates stated that the final rule should only permit the low tire pressure telltale that is capable of alerting the driver as to which tire is under-inflated, because motorists may not respond appropriately to re-inflate their tires unless they can tell which tire(s) is (are) under-inflated. Advocates argued that NHTSA has not provided any data regarding how consumers will react to a warning telltale that does not indicate which tire is under-inflated.

In the final rule, we have decided to adopt the NPRM's symbols for low tire pressure, but we have decided to change the requirement for the MIL symbol. For the low tire pressure warning, an internationally recognized symbol has been developed by ISO, and we are adopting that symbol as one of the options under FMVSS No. 101. In addition, we are providing an option for a telltale with a car symbol that would allow the TPMS to indicate which tire(s) is (are) significantly under-inflated by illuminating the corresponding tire on the telltale, which we believe would be readily understandable and also provide additional useful information to the driver. These symbols may be supplemented by the words ''Low Tire.''

We are not expressing any preference between these two symbols. Not all TPMSs may be able to distinguish and identify which tire is significantly under-inflated, and we expected that if the low tire pressure telltale were to illuminate, most drivers would check and adjust the pressure in all of their tires. Further, the Advocates did not provide any data to demonstrate that the consumers would be confused by ISO's international symbol for low tire pressure. Therefore, in order maintain a technology-neutral standard, we are adopting the NPRM's two options for the TPMS low tire pressure symbol.

Regarding the symbol for the TPMS malfunction indicator using a separate telltale, we have decided to modify the requirements proposed in the NPRM. (For those systems providing a combined low tire pressure/TPMS malfunction warning in a single telltale, no additional symbol is required because malfunction is indicated by the flashing sequence discussed above.) Several commenters stated that the ISO symbol for low tire pressure and NHTSA's proposed symbol for the MIL were so similar as to be confusing. In addition, as noted by Honda and Emtop, there is not any internationally recognized symbol for TPMS malfunction, so the agency has latitude in selecting an appropriate symbol for the MIL.

We agree that the TPMS-related telltales should be sufficiently distinct and comprehensible, so as to facilitate proper driver response in both low tire pressure and TPMS malfunction situations. Accordingly, consistent with the recommendations of Honda and Hyundai in their comments, we have decided that for dedicated TPMS malfunction telltales, the telltale must display the word ''TPMS,'' without any symbol. We understand that the term ''TPMS'' is becoming commonly known, and, because it references the system

itself, it is distinct from the low tire pressure warning. We do not believe that VW/Audi's suggested approach of having the low pressure symbol inside a circle with a diagonal slash through it would provide sufficient clarification. In the event that the International Standards Organization (ISO), the Society of Automotive Engineers (SAE), or some other voluntary standards organization develops a symbol for TPMS malfunction, the agency would carefully evaluate such symbol and consider migration to the consensus standard as part of a subsequent rulemaking. We will carefully evaluate the distinctness and comprehensibility of any such symbol.

We are not adopting ETV's recommendation that we require an audible alarm to accompany the TPMS telltale(s), because we believe that the requirements of the final rule provide an adequate warning to the driver.

(c) *Telltale Color.* (i) *Low Pressure Warning Telltale.* The NPRM proposed to require a yellow telltale to indicate to the driver when a tire becomes significantly under-inflated (*see* Table 2 of FMVSS No. 101).

BMW commented that manufacturers should be permitted (but not required) to change the TPMS low pressure telltale from yellow to red once tire pressure becomes ''extremely low.'' BMW recommended that the TPMS should be allowed to change from yellow to red once the tire(s) drop 50 percent or more below placard pressure, a point at which the tire can be considered functionally flat. In its comments, BMW emphasized that this feature is particularly important for run-flat tires, because a consumer may not be able to determine by visual inspection or by handling feedback that the tire is flat. According to BMW, run-flat tires are designed to be driven with a loss of inflation pressure, but only at low speeds and for a limited distance; therefore, the consumer must be advised not to continue driving for an extended period of time or at highway speeds.

VW/Audi and Emtop provided similar comments about permitting the low tire pressure warning to change from yellow to red at a specified point. VW/Audi asserted that this functionality is desirable, both as a matter of safety (*i.e.*, to provide a heightened level of alert to indicate that the risk of tire failure is at a higher level) and as a matter of practicability (*i.e.*, to permit a single location for the basic warning indicator and the heightened red alert).

ETV also suggested linking a change in telltale color to a change in tire pressure, although at a much earlier point than other commenters. Specifically, ETV recommended requiring illumination of a yellow telltale when a tire is 20 percent below placard pressure, but changing the color to red (with an accompanying beep) when the pressure drops to 25 percent below placard pressure. ETV argued that this color change would not confuse drivers and that it may encourage more immediate action to remedy the under-inflation situation.

For the final rule, we have decided to adopt the NPRM's proposed requirement for a yellow low tire pressure telltale. The issues of the appropriate telltale color and the possibility of changing from one color to another have been raised in earlier rounds of this rulemaking, and the commenters on the NPRM have largely reiterated arguments raised previously. The following summarizes our reasoning for the yellow color requirement.

As we noted in the NPRM, we believe that yellow is the most appropriate color for the low tire pressure telltale. The use of the color red is usually reserved for telltales warning of an imminent safety hazard. An example is the brake system warning telltale, which is red because a failure in the vehicle's brake system results in an imminent safety hazard that requires immediate attention. In contrast, NHTSA requires a yellow telltale for driver warnings when the safety consequences of the malfunctioning system do not constitute an emergency and the vehicle does not require immediate servicing. Based upon the results of the agency's tire testing, we have concluded that yellow is the appropriate color for the low tire pressure telltale because it conveys the intended message that the driver may continue driving, but should check and adjust the tire pressure at the earliest opportunity.

To respond to the commenters' requests that NHTSA permit a telltale that changes color from yellow to red, we are concerned that this could confuse consumers, particularly if it is left to the discretion of individual vehicle manufacturers to decide the level of under-inflation at which the red telltale is triggered. Conceivably, it would be possible for a vehicle manufacturer to program the TPMS to illuminate a yellow telltale for a fraction of a second, after which time, it would immediately turn red; such a requirement would meet the letter of the requirement, but foil its intent.

As a counterpoint to ETV's argument, we believe that it is possible that if a driver knows that the TPMS low tire pressure warning will eventually shift from yellow to red, that person may elect to postpone taking remedial action until that time, a result quite contrary to that which is intended. It is conceivable that such drivers might actually take corrective action more quickly if they know that the illumination of the yellow low tire pressure telltale is the only warning that they will receive. However, in any case, we expect that such delayed action would be the anomalous response.

Therefore, although we are retaining the yellow color requirement for the low tire pressure telltale, we have decided that vehicle manufacturers may supplement the required low pressure telltale with an additional warning. For example, vehicle manufacturers may choose to incorporate a second, red lamp to accompany the continuously-illuminated yellow low tire pressure telltale. This red lamp could be illuminated when the pressure in one or more tires becomes dangerously under-inflated, as defined by the vehicle manufacturer. This approach is consistent with our traditional practice of allowing manufacturers to incorporate measures, consistent with Federal motor vehicle safety standards, which are designed to further enhance safety. If a vehicle manufacturer chooses to add a second, red warning lamp, its meaning and function would have to be discussed in the vehicle owner's manual.

We are not adopting ETV's suggestion for requiring an audible beep when tire inflation pressure drops to some point lower than 25 percent below placard pressure, because the commenter has not provided any evidence to show that this redundant warning signal is necessary. Likewise, we are not adopting ETV's recommendation for a 20-percent under-inflation threshold, for the reasons discussed above.

(ii) *Malfunction Indicator Telltale.* The NPRM proposed to require the color for the MIL to be yellow, regardless of whether it is incorporated in a combined telltale with the low tire pressure warning or is provided as a separate, dedicated telltale. For the combined telltale, the proposed MIL color requirement would carry through from the low tire pressure telltale's color requirement, and for the dedicated MIL, the proposed color requirement was set forth in Table 2 of FMVSS No. 101.

In its comments, the Alliance expressed support for requiring the dedicated TPMS malfunction indicator telltale to be yellow, to be constantly illuminated as long as the malfunction exists, and to perform a bulb check as required for other telltales.

ETV stated its belief that a systemic failure of the TPMS should illuminate a

red warning telltale, because the gravity of this situation is on par with a tire failure.

In the final rule, we are adopting a yellow color requirement for the MIL, both for the combined telltale and separate telltale options. As noted under the earlier discussion of the MIL, we do not believe that a TPMS malfunction constitutes an inherently dangerous situation requiring immediate corrective action, and just because the TPMS is malfunctioning, it does not necessarily mean that the vehicle's tires are under-inflated. Thus, if a yellow telltale is appropriate for the low tire pressure warning, we do not believe that there is justification for a more stringent warning for the TPMS MIL, as would be indicated by the color red.

(d) *Telltale Extinguishment Requirements.* Under S4.2(b), the NPRM proposed to require that the low pressure telltale ''must extinguish after the inflation pressure is corrected.'' Similarly, under S4.4(a), the NPRM proposed to require that the TPMS malfunction telltale ''extinguishes when the malfunction has been corrected.''

Continental Teves commented that S4.2 is not technology-neutral because it does not provide for systems requiring manual reset (*e.g.*, hybrid systems). It recommended that the final rule permit the telltale to stay illuminated until the low-pressure situation has been corrected and the system has been reset in accordance with any applicable instructions in the owner's manual.

Schrader expressed concern that drivers will use TPMS reset buttons to extinguish the low pressure warning lamp without correcting the tire inflation problem, in order to extinguish the ''annoying'' telltale. In order to prevent such occurrences, Schrader stated that the final rule should not permit TPMSs with a manual reset feature that would allow consumers to recalibrate the system.

Emtop stated that the low tire pressure warning should not be extinguished until the tire pressure is at least 10 percent above the level specified in S4.2(a) of the NPRM.

We disagree with the comments of Continental Teves, which stated that S4.2 is not technology-neutral because that section does not specifically mention that the TPMS will be reset in accordance with any applicable instructions in the vehicle owner's manual. Although system reset was not specifically mentioned in S4.2, it is clearly addressed in S6(c), S6(i), S6(j), and S6(1) of the test procedures. However, in order to foster a better understanding of this provision, we have provided additional clarifying language in S4.2 of the final rule.

We agree with Schrader that drivers should not reset the TPMS so as to extinguish the low tire pressure warning telltale (or the MIL) until the underlying problem has been corrected (*e.g.*, restoring proper inflation pressure or remedying other problems). We believe that vehicle manufacturers will clearly address this issue when explaining the TPMS reset feature, if applicable. We believe that no additional language is necessary on this point.

As to Emtop's recommendation that we should require the tires to be refilled to at least 10 percent above the level specified in S4.2(a) of the NPRM before permitting the telltale to extinguish, we do not believe that such a requirement is necessary. First, if a tire is inflated to a level above the TPMS low tire pressure warning threshold, it is presumably safe to drive. In addition, we do not believe that such a provision is necessary, because we would expect consumers to fill all four tires to the recommended inflation pressure once the low tire pressure telltale illuminates.

(e) *Telltale Illumination Priority.* The NPRM did not provide any specification for telltale illumination priority for the combined TPMS telltale, in the event that the vehicle's TPMS encounters both a low tire pressure situation and a TPMS malfunction.

Several commenters urged the agency to clarify how to prioritize the messages for the low tire pressure warning and the MIL in a combined TPMS telltale, in the event that both of the underlying conditions materialize simultaneously. In their comments, Fuji and Mitsubishi each stated that the low tire pressure warning should take precedence over the TPMS malfunction warning. Honda suggested that the flashing sequence could occur immediately before and after one minute of steady illumination.

Emtop's comments suggested that, in many cases, illumination priority may be a non-issue, because, according to Emtop, if one of the telltales is operative, the other inevitably is not. Emtop stated that if there is a TPMS malfunction, then the low tire pressure telltale is unlikely to be able to provide reliable information. However, Emtop stated that the low tire pressure warning should take priority, if there is a malfunction affecting only one tire; in those cases, the system should continue to provide low tire pressure warnings for the unaffected tires, to the extent possible.

Fuji expressed concern that if the low tire pressure warning has complete priority over the malfunction warning, resetting the low pressure telltale could clear the malfunction telltale and would require a complete diagnostic check cycle before illuminating the malfunction telltale.

We believe that cogent arguments can be made that either the low tire pressure warning or the malfunction warning should be given priority in a combination telltale, as both messages relay important information to the driver. However, we would preface this discussion by saying that we expect that the simultaneous occurrence of a low pressure situation and a TPMS malfunction would be a very rare event.

Furthermore, we believe that the ability of the TPMS to monitor both low tire pressure and a malfunctioning component simultaneously may be a derivative of system design. For example, if a vehicle were equipped with TPMS with a low pressure telltale that depicts a vehicle with a light at each wheel, the TPMS could conceivably experience a malfunction in the sensor for one tire (thus triggering a malfunction warning) but still be capable of detecting low pressure in the remaining three tires. In contrast, a different TPMS system might be equipped with a low pressure telltale that does not distinguish individual tires, and a malfunction in its central processing unit may wholly disable the system's under-inflation detection capabilities. To the extent that a malfunctioning system can maintain some residual level of under-inflation detection capability, that would be beneficial, but it is not a result that could be consistently expected across TPM systems or even from a single system at different times.

As a result, we have decided to leave the issue of telltale illumination priority for the combined telltale to vehicle manufacturer discretion. We believe that because the manufacturers are the ones most familiar with the capabilities of their individual systems, they are the ones best equipped to handle this issue.

(f) *Supplemental Telltale.* Nissan sought clarification that it would be permissible to install a ''continuously-flashing yellow light'' instead of a second, red light on vehicles equipped with run-flat tires, in order to warn the driver when the tires have reach a level of under-inflation necessitating more immediate action. Nissan stated that the flashing light would provide a warning that the tire may not be appropriate for continued use, but it would not indicate the level of urgency associated with a red light. Nissan commented that it believes that its proposed continuously flashing light is sufficiently distinct from the TPMS combined telltale with the one-minute flashing sequence as to

permit the driver to distinguish between the two situations, and that the operation of the TPMS telltales would be fully explained in the vehicle owner's manual.

The NPRM's discussion of how it would be permissible for a vehicle manufacturer to install an additional red lamp to warn when a tire is extremely under-inflated (as defined by the manufacturer) was intended to provide one example of a supplemental TPMS telltale that could be provided. Other supplemental telltales, such as the one suggested by Nissan in its comments, would also be permissible, provided that they do not prevent the required TPMS telltale(s) from complying with the standard.

For example, for the flashing yellow lamp proposed by Nissan, we caution that it would not be permissible for that lamp to be superimposed on the required TPMS telltale(s), either the combined telltale or either of the separate TPMS telltales. We are concerned that if that were to occur, the required, continuously illuminated yellow low tire pressure telltale could be perceived as a flashing telltale. If the supplemental lamp were included in a combined TPMS telltale, the confusion could escalate even further. Thus, a supplemental telltale for TPMS must not impede or mask the functionality of the required TPMS telltale.

4. Tire-Related Issues

(a) *Replacement Tires and Spare Tires.* As discussed above in further detail, the NPRM proposed to require vehicle manufacturers to certify that their TPMS-equipped vehicles comply with FMVSS No. 138 with the tires installed at the time of initial vehicle sale.

Public Citizen objected to the NPRM's approach vis-à-vis replacement tires, arguing that it would be feasible for vehicle manufacturers to recommend replacement tires that would work with the system and that TPMS technology should be flexible enough to accommodate new tires. Public Citizen argued that NHTSA should require vehicle manufacturers to certify that the TPMS will operate with all replacement tires and original equipment full-sized spare tires.

Advocates expressed concern that if consumers install tires that are incompatible with the TPMS, they may elect to disable or disregard the TPMS MIL rather than replace the tires (presumably for reasons of cost). Even if tire incompatibility is a relatively uncommon event, Advocates argued that drivers may lose the benefits of the TPMS in those cases. Advocates stated that if NHTSA decides to permit incompatible replacement tires, the agency has an ongoing responsibility to determine which tires are incompatible and that this responsibility should not be shifted to the public. Instead, Advocates stated that the agency should issue frequent consumer notices regarding replacement tires that are incompatible with different TPMSs, perhaps as part of NHTSA's UTQG consumer information efforts. (A similar comment was provided by NADA, urging NHTSA to develop and maintain a comprehensive database of tire/rim combinations that would not work with particular TPMSs installed on certain vehicles.)

Advocates also argued that the TPMS should be required to comply with the standard when a full-sized spare is mounted on the vehicle, and that use of a compact spare tire should trigger the TPMS MIL. Advocates argued that requiring that compact spares cause illumination of the MIL presumably would encourage the driver to replace the spare tire quickly with a full-sized tire.

ETV stated that use of a spare tire should not totally disable the TPMS. ETV argued that although it would be preferable to have the TPMS monitor the spare tire as well, use of a spare tire should not mask a low tire pressure problem with another tire.

The RMA commented that the number of replacement tires in use at any given time is very high, since tires normally will be replaced two or three times over the life of a vehicle. Therefore, the RMA stated that the TPMS should be required to function with replacement tires, and that permitting incompatible replacement tires is contrary to the purpose of the TREAD Act and could compromise consumer safety. The Japan Automobile Type Manufacturers Association, Inc. (JATMA) expressed support for the comments submitted by the RMA, including the comment on the need for the TPMS to continue to function properly with replacement tires.

The TIA did not agree with the NPRM's approach limiting the standard's requirements to those tires installed on the vehicle at the time of initial vehicle sale. The TIA stated that in recent years, the number of replacement tires shipped has been about four times greater than the number of OE tires shipped, which supports the common understanding that vehicles generally outlast their OE tires. In light of these statistics, the TIA argued that it would be unacceptable to allow a TPMS to cease to function after the vehicle's tires are replaced, for reasons of public safety and in observance of congressional intent under the TREAD Act.

The TIA reiterated its earlier comments on the TPMS rulemaking (submitted by the Tire Association of North America (TANA), as TIA was then known), in which the organization asked NHTSA to ensure that vehicle manufacturers provide affordable access to TPMS service information to all tire dealers and service providers. In its earlier comments, TANA stated, ''Original Equipment Manufacturers (OEMs) and their wholly-owned or endorsed stores should not be the only businesses with the ability to service or reset these systems, restricting the ability of consumers, tire dealers, aftermarket specialists and others to service these TPMSs by requiring codes, special equipment, computer software, or other methods of restricting automotive service.'' [33]

The TIA argued that without this type of information, it would be very difficult for an independent dealer to know how to install, repair, or reset each type of TPMS. It stated that tire rotation also could become a major problem if telltales are used that indicate each individual wheel, as opposed to a TPMS that simply warns of a low tire pressure problem generally. The TIA stated that, in order to help with these issues, it is in the process of developing a comprehensive TPMS training program for the tire industry, with the goal of bringing OE and aftermarket TPMS manufacturers together to compile all necessary information on servicing each TPMS for the benefit of any individual performing tire service. According to TIA, this program should be launched in the first quarter of 2005. Because of this program, TIA argued that it is appropriate for the TPMS final rule to require vehicle manufacturer certification that the vehicle's TPMS will continue to function after the OE tires are replaced.

SEMA expressed support for NHTSA's tentative decision to apply the rule to only the original tires and wheels installed on the vehicle at the time of first sale. SEMA stated that requiring manufacturers to certify the vehicle under the standard with aftermarket tires and wheels would be unduly burdensome, although the organization urged NHTSA to go even further in terms of addressing burdens under the rule (*see* comments on Small Business Impacts below).

NADA argued that no legal liability should result in cases where a particular tire/wheel combination cannot be

[33] Docket No. NHTSA–2000–8572–129.

properly monitored by a particular TPMS. NADA stated that if tires and rims that meet the applicable requirements for FMVSSs directly dealing with such equipment are properly installed on a vehicle, the fact that such installation causes illumination of the TPMS MIL should not be considered a violation of 49 U.S.C. 30112(a), which prohibits the sale of noncomplying motor vehicle equipment; in such cases, the MIL would illuminate, but there would be no defect or noncompliance. In its comments, the NADA also stated that installation of incompatible replacement tires should not be considered a violation of 49 U.S.C. 30122(b), because there would be no ''make inoperative'' situation (*i.e.*, action to take the vehicle out of compliance with an applicable FMVSS) unless the repair business were to somehow override the MIL. In addition, NADA suggested that tire and wheel manufacturers should be required to certify to consumers and tire installers as to the TPMSs with which their tires are or are not compatible.

Fuji requested that NHTSA adopt explicit language in the regulatory text of the final rule acknowledging that replacement tires and spare tires are not covered under the standard. Fuji recommended the definition of ''tire pressure monitoring system'' or paragraphs S4.2(a) and (b) of the NPRM as potential locations for inclusion of such a statement. Fuji argued that unless clarifying language is added, there may be confusion in the future as to which ''four tires'' must be monitored.

After considering these comments related to TPMS functionality with replacement tires, we have decided to adopt the approach presented in the NPRM to require the TPMS-equipped vehicle to be certified with the tires originally installed on the vehicle at the time of initial vehicle sale. We emphasize that it would not be permissible for dealers to install tires on a new vehicle that would take it out of compliance with the TPMS standard, and to do so would violate the prohibition on manufacturing, selling, and importing noncomplying motor vehicles and equipment in 49 U.S.C. 30112. If the consumer cannot expect to acquire a vehicle that meets all applicable safety standards at the time of first purchase, the purpose of Standard No. 138, and in fact all Federal motor vehicle safety standards, would be severely undermined. Furthermore, we expect that vehicle manufacturers, in light of their close relationship to their dealers, would provide sufficient recommendations to allow dealers to install alternate tires that permit the TPMS to function properly.

In order to ensure continued long-term functionality of the TPMS, the final rule requires a TPMS malfunction indicator capable of detecting when a replacement tire is installed which prevents continued proper functioning of the TPMS and of alerting the driver about the problem. (The interplay between the TPMS MIL and the activities of aftermarket sales and service providers related to TPMSs, including legal implications of those activities, are discussed below.)

As noted in the NPRM, there are several factors that have contributed to our decision as to how to best ensure the long-term functionality of the tire pressure monitoring system. First, information presented to NHTSA shows that there are currently over four million TPMS-equipped vehicles.[34] Neither the agency nor vehicle manufacturers have received reports indicating any significant performance problems with those TPMSs when replacement tires are installed on the vehicle. In addition, the agency has noted previously that aftermarket direct TPMSs are available and that such systems may be capable of functioning regardless of the construction of the tires.[35] NHTSA does not have any information to suggest a significant problem with the operation of aftermarket TPMSs, although the performance capabilities of these systems are not known. This significant real world population of TPMSs suggests that TPMSs will continue to work with replacement tires in the vast majority of cases.

However, NHTSA has been presented with data demonstrating that a very small number of replacement tires (estimated at less than 0.5 percent of production) may have construction characteristics and material content that cause the vehicle's TPMS to exhibit functional problems.[36] There is no clear design solution for this problem. In many instances, TPMSs may function properly even when equipped with replacement tires with the previously discussed characteristics. However, to date, it has not been possible to develop an appropriate performance measure that would reliably identify those anomalous tires that would prevent proper TPMS functioning.

The commenters did not provide any new information that would suggest that the technical problems related to TPMS functionality with all replacement tires have been resolved, or that it has become possible to identify that small subset of problematic tires that would prevent the TPMS from continuing to operate properly. Comments noting the prevalence of replacement tires in operation do nothing to resolve the underlying technical problems previously identified.

Further, it is NHTSA's understanding that some of the reported compatibility problems between direct TPMSs and certain replacement tires may have been related to vehicle manufacturer use of TPMS transmitters and receivers produced by different suppliers.[37] Incompatibility between different parts of the TPMS may have contributed to the overall problem in those cases. Thus, cognizance of this problem may limit further the number of incidents of incompatibility between TPMSs and replacement tires.

Based upon the above information, we now believe that there is not a sufficient basis to require vehicles to comply with FMVSS No. 138 with all replacement tires. While the number of tires expected to be incompatible with the TPMS is small, such a requirement would nonetheless raise significant practicability concerns. Because no one is certain which tires, either produced now or in the future, will cause various TPMSs to malfunction, it is not practicable to require vehicle manufacturers to certify that the TPMS will continue to function properly with all replacement tires.

We continue to believe, however, that the TPMS should continue to function properly beyond the point at which the vehicle's original tires are replaced, a clearly foreseeable event. Continued TPMS functionality with replacement tires is consistent with Congress' intention to improve tire and vehicle

[34] Letter from Robert Strassburger, Vice President, Alliance of Automobile Manufacturers, to NHTSA (October 20, 2003) (Docket No. NHTSA–2000–8572–277).

[35] 67 FR 38704, 38731 (June 5, 2002).

[36] The RMA submitted information on the prevalence of tires with characteristics identified as potentially being incompatible with proper TPMS functioning, at least in some cases. These problems are primarily related to the tires' construction (*e.g.*, high carbon content in low aspect-ratio tires, thicker sidewall, or steel body ply sidewall). According to the RMA, in 2002, light vehicle tires having either steel body ply cords (steel casing tires) or run-flat capability accounted for less than 0.5 percent of tires distributed in the United States. (*See* letter from Steven Butcher, Vice President, Rubber Manufacturers Association, to NHTSA (October 31, 2003) (Docket No. NHTSA–2000–8572–282)).

[37] GM submitted a letter to NHTSA on September 11, 2003, outlining the problems that their direct TPMS was experiencing when different run-flat tires were installed on the vehicle. (Docket No. NHTSA–2000–8572–275) Subsequent discussions revealed that TPMS components from different TPMS manufacturers were used and that the same tires permitted proper TPMS functioning when TPMS components from a single TPMS manufacturer were used.

safety, as expressed in the TREAD Act. Moreover, there are other TPMS failure modes (*e.g.*, pressure sensor battery life, pressure sensor failure, antenna failure, TPMS power loss), and unless drivers are made aware of such failures, they could have a false sense of security. Therefore, we are adopting a requirement that the TPMS be equipped with a telltale indicator that would alert the driver of a TPMS malfunction, tire-related or otherwise. In addition, we are adopting owner's manual requirements to make consumers aware of this potential problem.

In the final rule, we have decided not to require the TPMS to monitor the pressure in a spare tire (either compact or full-sized), either while stowed or when installed on the vehicle, and the agency will not conduct compliance testing for low tire pressure detection under Standard No. 138 with a spare tire installed on the vehicle. As we discussed in the NPRM, we have come to this decision for a number of reasons. First, we believe that most drivers know that temporary tires are not intended for extended use. Second, compact spare tires pose operational problems for both direct and indirect TPMSs. Such a requirement would be a potential disincentive for the vehicle manufacturer to supply a full-sized spare (or any spare tire) if TPMS compliance were required. In addition, it would increase the cost of the rule, but provide little if any safety benefit.

However, if a spare tire is installed on the vehicle and it prevents the TPMS from being able to detect low tire pressure, the TPMS must illuminate the MIL, as it would with any other TPMS malfunction. We believe that such a requirement is important to remind the driver to replace the spare tire, either by repairing the damaged tire or purchasing a new replacement tire. In that way, the TPMS would encourage drivers not to continue driving on the spare tire for extended periods and to rapidly return the spare tire to its emergency reserve status.

We do not agree with Fuji's comment regarding the need to include additional regulatory text to clarify that replacement tires are not covered under the standard. Unless some special provision is included, a FMVSS is understood to require vehicle certification with original equipment. However, because the vehicle may come equipped with a spare tire as original equipment, we have added language to the test conditions to clarify that the spare tire will not be installed for the purposes of low tire pressure testing (*see* S5.3.7).

Regarding the issue of consumer awareness of replacement and aftermarket tires that are inconsistent with continued proper TPMS functionality, we believe that vehicle manufacturers and the tire industry will have strong incentive to make information on incompatible tires available to consumers and to businesses supplying automotive equipment and services. However, because no one is certain which tires, either produced now or in the future, will cause various TPMSs to malfunction, it is not reasonable to expect vehicle manufacturers to make assurances to other businesses or to consumers that the TPMS will continue to function properly with all replacement tires or to attempt to identify all incompatible tires and rims. For its part, NHTSA will notify vehicle manufacturers when incompatible tires are discovered during compliance testing, and the results of such tests are publicly available.

Finally, we would address NADA's comments regarding the legal implications for aftermarket installers and vehicle repair businesses who either install aftermarket tires or rims on the vehicle or who service the TPMS. We would begin by noting that the TPMS standard is not the first to require a malfunction indicator. Malfunction indicators are also required under FMVSS No. 105, *Hydraulic and Electric Brake Systems,* and FMVSS No. 121, *Air Brake Systems,* and a ''readiness indicator'' is required under FMVSS No. 208, *Occupant Crash Protection.* Such malfunction indicators are generally favored because they provide important information to consumers, as well as to businesses with an interest in vehicle system operations.

Under 49 U.S.C. 30122(b), ''A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter [49 U.S.C. 30101 *et seq.*] unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.'' As a general matter, malfunction indicators can alert consumers when one of the above entities has made a vehicle modification that has rendered a functioning system inoperative. In such instances, the business presumably took such action inadvertently and would remedy the situation accordingly once the malfunction indicator is triggered.[38] This principle is important, because such modifications may: (1) Make the monitored system itself incapable of functioning; (2) have an appreciable impact on vehicle safety, and (3) be relatively difficult for the consumer to remedy.

However, the situation surrounding the TPMS malfunction indicator represents a special case. First, the TPMS itself is analogous to a malfunction indicator, because the low tire pressure telltale would only be expected to illuminate if the driver has failed to perform routine tire maintenance or if a tire has developed a leak. Therefore, the TPMS MIL is one step removed, essentially being a malfunction indicator for a malfunction indicator. In any event, even if the TPMS back-up system were not available, the driver could (and should) manually check his vehicle's tire inflation pressure on a regular basis.

In situations where the TPMS MIL is detecting aftermarket or replacement tires or rims that prevent the continued proper functioning of the TPMS, such equipment arguably has not damaged the TPMS itself, but instead has hindered its low tire pressure detection capability. (Arguably, the tires themselves meet the requirements of the relevant FMVSSs related to tires and would be suitable for safe vehicle operation, absent the TPMS problem.) Once the TPMS MIL illuminates, the consumer would be warned that the equipment has caused a TPMS malfunction, and the consumer could substitute other equipment that would permit the TPMS to resume normal functioning.

As noted previously, vehicle manufacturers, tire manufacturers, and other businesses may not know, or reasonably be able to know, exactly which of the many aftermarket or replacement tire and rims would prevent the TPMS from continuing to function properly. There are many tire and rim choices for a given vehicle, and a variety of businesses are involved in tire and rim installation and repair. In such cases, these businesses may only come to know of a problem once the TPMS MIL illuminates. Furthermore, because some TPMSs must be driven for a period of time in order to detect a

[38] An exception to this principle is where the monitored system, or a part of that system, wears out or experiences damage in a crash or similar event. In such cases, some intervening event caused the ''make inoperative'' situation, and a dealer or vehicle repair business is not required to bring the safety system back up to full compliance with an applicable FMVSS.

malfunction, it is quite possible that the consumer would have driven away from such business before the MIL illuminates.

After the time of first sale, our primary goal for the TPMS MIL is to provide information and a warning to the consumer in order to ensure long-term operability of the TPMS. In the tire-related situations described above, the TPMS MIL has arguably served its purpose; the consumer has been warned of the compatibility problem, and the consumer and the installer are able to work together to resolve that problem. The intention is not to penalize the business for accidentally installing one of a very small number of incompatible replacement tires that are difficult to identify.

We note that this result might be different where it can be shown that the installer knew of the incompatibility beforehand or took some other action to disable a functioning TPMS unit. In addition, we would point out that we believe that the TPMS MIL represents a unique case, and the above discussion does not alter our approach to malfunction indicators generally or to the other specific malfunction indicators referenced above.

(b) *Tire Reserve Load.* Commenters representing tire manufacturers and sellers stated that the TPMS standard should require the low tire pressure telltale to illuminate before any of the vehicle's tires have insufficient pressure to carry the actual load on the vehicle. Commenters argued that because it is difficult to determine what a vehicle's actual load will be, the vehicle maximum load should be used for the relevant TPMS calculations. The RMA discussed this issue at length in its comments, and its arguments are summarized below. ETRTO, JATMA, TIA, and the Tire Rack provided similar comments that supported RMA's position on this issue, and AAA also supported a pressure reserve requirement.

RMA argued that the NPRM was deficient and that a supplemental notice of proposed rulemaking (SNPRM) should be issued ''to solicit public comment on the need to include a requirement in the TPMS rule that a low tire pressure warning telltale will be activated when the pressure is already at a level below that required to support the vehicle maximum load.'' RMA said that a tire pressure reserve is essential, because a TPMS may instill a false sense of security in many consumers who may rely on the TPMS to provide an under-inflation warning, rather than conducting regular tire maintenance. RMA argued that this concern was noted by NHTSA at earlier stages of the TPMS rulemaking, and it cited other sources in NHTSA's TPMS docket to conclude that the record establishes that consumers may rely on the TPMS in this manner. As a result, RMA stated its belief that there is a high probability that tires will be operating below placard pressure, but above the TPMS warning threshold.

The RMA further argued that placard pressure (upon which the low tire warning is based) is set by the vehicle manufacturer, and oftentimes for reasons such as handling and comfort, the placard pressure is set only slightly above the minimum pressure needed to carry the vehicle's maximum load. Such minimum pressures are specified in the load/pressure tables published by relevant tire industry organizations, such as those contained in the Tire & Rim Association Yearbook. As a result, the RMA stated that in a significant number of cases, by the time a vehicle's tires drop to 25 percent below placard pressure and the driver receives a low pressure warning from the TPMS, tire pressure would have dropped below the minimum pressure required to safely carry the vehicle's weight at maximum load. The RMA argued that overloaded tires in a fully-loaded condition could result in cumulative structural damage to the tire and an increased risk of tire failure.

Therefore, RMA argued that in the interest of safety, NHTSA should adopt a tire pressure reserve requirement to ensure that the tires can carry the vehicle maximum load at the point at which the TPMS low tire pressure warning telltale illuminates. As already noted, the RMA urged NHTSA to issue an SNPRM to address this issue.

In its comments, the EC stressed that the maximum load capacity and minimum inflation pressure compatible with the load (along with the speed of travel) are important factors for tire performance and safety. The EC stated that the pressures recommended by the tire manufacturers should be regarded as minima, because tires might suffer structural damage at pressures below those recommended pressures.

The TRA's comments also expressed concern that the proposed rule would permit the vehicle to operate without a warning in situations where tire inflation pressure is below the minimum load/inflation pressure values established by the tire industry. TRA argued that the NPRM's approach is a deviation from other NHTSA rulemakings, which have incorporated language to ensure that the tire pressure is appropriate for the vehicle's load (*e.g.*, requirements in FMVSS Nos. 109, *New Pneumatic Tires,* and 110, *Tire Selection and Rims*).

This issue is already before the agency in a separate proceeding. RMA submitted a petition for rulemaking with the agency to amend FMVSS No. 110 to establish a tire reserve load requirement.[39] RMA's comments on the NPRM reiterate the arguments raised in its petition, and those other commenters who addressed the tire reserve load issue made arguments consistent with those of RMA.

In response to the RMA's petition, NHTSA re-examined a 1981 NHTSA study of tire failure and reserve load did not demonstrate any correlation between failure and load,[40] and decided to conduct a newer and more comprehensive study of tire failure and reserve load, which would reflect changes in both tires and the vehicle fleet. NHTSA noted in the TPMS NPRM that if new data indicate a sufficiently strong correlation, the agency would propose appropriate amendments to its standards in a separate proceeding.[41]

As we noted in the NPRM, we believe that the issue of reserve load is a tire issue most properly considered under FMVSS No. 110, as amended (*see* 67 FR 69600 (November 18, 2002) and 68 FR 37981 (June 26, 2003)). Instead of issuing an SNPRM, we have decided to address this issue in our response to the RMA's petition for rulemaking on tire reserve load. We are publishing a separate notice that responds to that petition.

(c) *Changes to Tire Publications.* Because of its potential to impact NHTSA's TPMS and tire standards, we are taking this opportunity to address the comment submitted by the Tire and Rim Association[42] and the related supplemental comment submitted by the Alliance[43] regarding changes to the 2005 TRA Year Book. In its comment, the TRA expressed concern that, in its opinion, the NPRM may ''inappropriately'' permit under-inflation of passenger car and light truck tires below the recommended load/inflation limits established by the tire industry, as reflected in the TRA Year Books. (As discussed in further detail below, FMVSS Nos. 109 and 110 currently reference the publications of a number of tire organizations, including the TRA, as source documents that vehicle manufacturers must consult in

[39] Docket No. NHTSA–2002–11398–8.

[40] ''The Relationship Between Tire Reserve Load Percentage and Tire Failure Rate,'' Crash Avoidance Division, Office of Vehicle Safety Standards, NHTSA (81–09–NPRM–N01–002) (1981).

[41] 69 FR 55896, 55914 (Sept. 16, 2004).

[42] Docket No. NHTSA–2004–19054–72.

[43] Docket No. NHTSA–2004–19054–90.

specifying tire inflation pressure values.)

The TRA stated its intention to modify its 2005 TRA Year Book by adding the following statement: ''If the vehicle is equipped with a Tire Pressure Monitoring System (TPMS), the load on the tire must not exceed the tire load capacity based on the inflation pressure at the point of illumination of the TPMS warning telltale.'' (This language has since been incorporated in a footnote in the 2005 TRA Year Book.)

The Alliance's supplemental comment stated that TRA's actions create potential compliance problems for TPMS-equipped vehicles. The Alliance stated that the TRA's amendment of its Year Book in this fashion amounts to a unilateral attempt to modify substantive provisions of a vehicle safety standard. It also faulted the TRA for eliminating information from its Year Book about load limits at pressures between 20 psi and 26 psi. According to the Alliance, NHTSA granted a privileged status to the TRA and other tire organizations named in FMVSS Nos. 109 and 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* by authorizing those organizations' publications to serve as source documents for the tire load limit and other information required on certain vehicle labels. Other industry standards incorporated in FMVSSs and other NHTSA regulations refer to a specific version or year of issuance. According to the Alliance, the TRA's actions amount to an abuse of this privilege.

The Alliance argued that the load rating information in the publications of the TRA and other referenced organizations have remained relatively stable for nearly two decades, except for introduction of new tire sizes, and that the information has been generally predictable, having been calculated on the basis of universally adopted formulae for tire load rating. The Alliance argued that the TRA's action undermines NHTSA's rulemaking authority by taking steps which would have the effect of modifying the threshold for illumination of the TPMS low tire pressure warning telltale in a manner consistent with the TRA's policy preference.

In light of the above, the Alliance urged NHTSA to clarify in the final rule for TPMS that the footnote in the 2005 TRA Year Book related to TPMS-equipped vehicles has no regulatory significance and does not affect the tire load rating for purposes of S4.3.1(c) of FMVSS No. 110 and the related provision in FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.* In addition, the Alliance requested that NHTSA amend FMVSS Nos. 109, 119, and 139, *New Pneumatic Tires for Light Vehicles,* to specify use of the 2004 publications of the listed tire organization in those tire standards as the appropriate sources for determining permissible tire load ratings. The Alliance argued that good cause exists for so amending FMVSS Nos. 109, 119, and 139 without notice and comment, because of the potential compliance problems that could arise upon publication of the 2005 TRA Year Book. In the alternative, the Alliance asked that its supplemental comment be treated as a petition for rulemaking to amend FMVSS Nos. 109, 119, and 139.

We would begin by briefly explaining the relevant requirements currently contained in our safety standards for tires and our reasoning for referencing certain tire industry publication without a specific year or volume designation. Paragraph S4.4.1 of FMVSS No. 109 requires that each tire manufacturer make available to the public information on the rims that may be used with each tire that it produces.[44] Such information may: (1) Take the form of a list that must be furnished to dealers of the manufacturer's tires, NHTSA, and any person upon request; or (2) be contained in a publication by one of the following organization: (a) The Tire and Rim Association; (b) the European Tyre and Rim Technical Organization; (c) the Japanese Automobile Tyre Manufacturers Association; (d) Deutsche Industrie Norm; (e) the British Standards Institution; (f) the Scandinavian Tire and Rim Organization; and (g) the Tyre and Rim Association of Australia. In most instances, the relevant information is listed in one of these industry publications.

The current requirements, discussed above, were adopted in 1981, when NHTSA amended its tire standards to authorize the publications of the organizations listed above to serve as the source documents for tire load limits and other tire safety information.[45] The purpose of this rulemaking action was to expedite the introduction of new tires to the market. (Before the 1981 amendment to the tire standards, tire manufacturers were required to petition NHTSA each time they intended to introduce new tires. NHTSA maintained a listing of all registered tires in Table 1, Appendix A of FMVSS No 109.) The current system worked predictably and generated little controversy until now.

However, the TRA's recent action (*i.e.*, amending its 2005 Year Book by incorporating additional text in a footnote to its tire selection procedure) represents a *de facto* substantive change to our tire placard requirements. This change could have an impact on vehicle manufacturers' tire and rim selections, because FMVSS Nos. 110 and 120 require vehicle manufacturers to rely on information provided by the tire industry. Specifically, S4.3.1(c) of FMVSS No. 110 allows vehicle manufacturers to recommend a lower-than-maximum tire inflation pressure so long as the tire load does not exceed the tire load rating appearing in one of the publications described in S4.4.1(b) of FMVSS No. 109.[46] Because the new TRA language may change how the tire load information is calculated, this represents a substantive change to our tire safety information regulations.

Only NHTSA has the authority to amend the FMVSSs pertaining to tires. Any substantive changes to our regulations, including ones involving maximum tire load formulae, require agency action, as well as notice and comment. Because no such action has taken place and because TRA's above-discussed amendment to its 2005 Year Book may affect our regulations, we believe that it is necessary to clarify the regulatory effect of the TRA's footnote.

In order to avoid the impermissible regulatory effect of the TRA's footnote, we are clarifying that the provisions of FMVSS Nos. 110 and 120 pertaining to tire selection only require vehicle manufacturers to consult the numerical values contained in the load/pressure tables provided in the publications of the enumerated tire industry organizations. Thus, the footnote related to TPMSs in the 2005 TRA Year Book has no legal or regulatory effect.

We caution the tire organizations referenced in our tire standards that action to achieve the footnote's results through direct manipulation of the values in the load/pressure tables would have the equally impermissible effect of amending our tire standards. If that were to occur, the agency would be forced to consider other options, such as specifying a specific year(s) for these tire industry publications (*e.g.*, 2000 or later), reverting to the prior system under which tire manufacturers would be required to petition the agency before introducing new tires, or publishing the equations for calculation of recommended tire pressures (thereby

[44] Similar requirements are contained in S5.1 of FMVSS No. 119 and S4.1.1 of FMVSS No. 139.

[45] *See* 46 FR 61473 (Dec. 17, 1981).

[46] Similar requirements are contained in S5.1 of FMVSS No. 120.

allowing vehicle manufacturers to directly recommend pressures).

(d) *Minimum Activation Pressure.* Paragraph S4.2 of the NPRM proposed to require that the TPMS must illuminate a low tire pressure warning telltale not more than 10 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the third column of Table 1, *Low Tire Pressure Warning Telltale—Minimum Activation Pressure,* whichever is higher. Table 1 proposed minimum activation pressures (MAPs) for different tires, based upon: (1) Tire type, and (2) maximum or rated inflation pressure. The specified tire types included P-metric (Standard Load), P-metric (Extra Load), Load Range ''C,'' Load Range ''D,'' and Load Range ''E.''

In general, the proposed MAPs in Table 1 were based on the lowest inflation pressure values provided in the TRA, JATMA, and ETRTO Year Books for loads specified, as well as available information on minimum activation pressures for TPMSs. The relevant tire industry Year Books in 2000 consistently reported low pressure values down to 140 kPa (20 psi) for standard P-metric tires.

However, the agency found that for light truck tires, the low values reported in the tire industry Year Books were not consistent, although further analysis demonstrated that minimum pressure values were approximately 58 percent of the maximum inflation pressure for the tires. Therefore, the agency utilized this formula in proposing values for LT tires in Load Ranges ''C,'' ''D,'' and ''E.'' [47]

In its comments, the Alliance requested that, as part of the final rule, the agency respond to the Alliance's earlier petition for rulemaking [48] seeking revision of Table 1 for minimum activation pressures for vehicles with Load Range ''C,'' ''D,'' and ''E'' light truck tires. The Alliance's petition stated that the MAPs currently contained in Table 1 do not allow tires (particularly Load Range ''D'' and ''E'' tires) to be used across the safe operating ranges of inflation pressures for which loads are specified in the Tire and Rim Association Yearbooks. According to the Alliance, on some vehicles such as 15-passenger vans and large pick-up trucks with a large differential between front and rear GAWRs, the front tires may be over-specified for the load they carry. In such cases, vehicle manufacturers may specify tires that are appropriate for the heaviest axle (*i.e.*, the rear axle), thereby minimizing potential consumer confusion related to different front and rear placard pressures and different front and rear replacement tires. The Alliance argued that the MAPs proposed in Table 1 for LT Load Range ''C,'' ''D,'' and ''E'' tires are set too close to the placard pressure for these vehicle applications and, accordingly, should be set at lower values.

The Alliance argued that for Load Range ''D'' and ''E'' tires, field performance data and other test data show that there is no safety need for the MAPs for these tires currently contained in Table 1, and in fact, the Alliance stated that the currently listed MAPs for those tires could actually have adverse safety implications. According to the Alliance, the MAPs recommended in its petition as revisions to Table 1 would allow LT tires to be used safely in different load applications in a manner consistent with the TRA Yearbook. The Alliance's petition asserted that if the agency retains Table 1 as proposed, it ''would necessitate significant vehicle redesigns, cost penalties, and adverse safety and non-safety effects that are not justified by any safety need.''

Based upon the above, the Alliance's petition requested modification of Table 1 to set minimum activation pressure for LT tires based upon the vehicle's load range. For example, if a Load Range ''E'' tire were used in a Load Range ''D'' application, the Load Range ''D'' minimum activation pressure could be used for TPMS activation purposes. For a more complete explanation, readers should consult the Alliance's petition.

Alternatively, the Alliance stated that if the petition for rulemaking related to MAPs could not be resolved in time for issuance as part of the final rule, NHTSA should not specify MAPs for the affected vehicles and instead defer implementation of the MAP requirements for those vehicles until rulemaking can be conducted at a later date.

The major vehicle manufacturers that commented on the MAP issue supported the Alliance petition and the arguments raised therein. DaimlerChrysler stated that the NPRM does not accommodate vehicles that require multiple tire pressures for different driving conditions (*i.e.*, Load Range ''C,'' ''D,'' and ''E'' tires). DaimlerChrysler commented that the MAPs for LT tires in Load Ranges ''D'' and ''E'' in Table 1 are 38 psi and 46 psi, respectively, but that it uses these tires in applications with a placard pressure of 40 psi. Thus, DaimlerChrysler requested that the MAP for these tires be set at 35 psi, a value consistent with the TRA minimum recommended pressure for those tires. (However, in a supplementary comment dated February 8, 2005, DaimlerChrysler subsequently retracted its support for a MAP set at 35 psi for Load Range ''D'' and ''E'' tires.[49] In that letter, DaimlerChrysler stated that it supports a solution consistent with the recommendation in the Alliance's petition for rulemaking on the MAP issue.)

In its comments, DaimlerChrysler also provided its view of the practical implications of the MAP issue. It stated that if proposed Table 1 were adopted without change, vehicle manufacturers' current practices for use of Load Range ''C,'' ''D,'' and ''E'' tires would result in the low tire pressure telltale being illuminated much of the time when the vehicle is lightly loaded. DaimlerChrysler argued that this situation could result in desensitization of the driver and that such drivers may lose the benefits of the TPMS. DaimlerChrysler further argued that this situation would leave vehicle operators with the choice of ignoring the safety warning, permanently disabling the warning, or over-inflating their tires.

DaimlerChrysler suggested that the vehicles in question could be equipped with a driver-selectable TPMS. DaimlerChrysler stated that this mechanism would make TPMSs technology-neutral and tire type-neutral, because the driver (or the service shop) could set the reference pressure based on the load, driving conditions, or recommended replacement tire pressure. According to DaimlerChrysler, such a system would provide a reliable warning when there is a pressure loss of 25 percent under this reference level.

DaimlerChrysler suggested that if NHTSA is not prepared to address this MAP issue quickly, the final rule could defer the rulemaking's requirements for trucks greater than 8,500 pounds (3,856 kg) (not passenger cars or MPVs) to allow more time to respond to the issue.

General Motors stated that it conducted tests of four vehicles using lightly-loaded and GVWR loading conditions. GM stated that the vehicles were tested both at the recommended pressures and at the increased pressures that would be required by the proposed MAPs in Table 1. According to GM, the

[47] We note that the TRA 2000 Year Book did report values lower than 58 percent for some LT tires. However, the agency believes that at 58 percent below the maximum pressure, most tires would be significantly under-inflated for most vehicle applications. Consequently, we did not propose MAPs for LT tires below this level.

[48] Docket No. NHTSA–2000–8572–265.

[49] Docket No. NHTSA–2004–19054–89.

higher pressures resulted in adverse effects, including decreased rollover resistance, reduced understeer (2 vehicles), increased response time (2 vehicles), and degraded on-center handling (3 vehicles). GM commented that the MAPs currently proposed could provide a disincentive for vehicle manufacturers to select tire types that exceed load-carrying requirements for particular vehicle applications, resulting in lower load range tire types for some vehicle models than would otherwise have been chosen.

The issues raised by the Alliance's petition related to MAPs involve a key aspect of the low tire pressure warning provided by the TPMS, in that the MAP represents a threshold value for maintaining safe tire operation, because a higher MAP could provide an earlier warning to the driver. Although the MAP issue raised by the Alliance is only expected to impact a small percentage of vehicles using LT tires (*i.e.*, typically vehicles with a GVWR of over 8,500 pounds), the agency must fully understand the potential rollover and handling implications of the final values it selects for the MAPs. This is particularly true for vehicle applications where the recommended inflation pressure is close to the MAP or where it is much lower than the maximum inflation pressure. For example, 15-passenger vans and some pickup trucks may have a greater propensity for rollover when their tires are significantly under-inflated, so prompt application of FMVSS No. 138 (with appropriate MAPs) to such vehicles is important for achieving the safety benefits of the TPMS standard. The agency is currently analyzing the issue of minimum activation pressures for LT tires, and it is our intention to respond to the Alliance's petition on MAPs as part of a separate rulemaking.

We would emphasize that vehicles equipped with LT tires load range ''D'' and ''E'' must be equipped with a TPMS that conforms to the requirements of FMVSS No. 138. However, in the interim period, we have decided to alter the MAPs listed in Table 1 for load range ''D'' and ''E'' tires from the values proposed in the NPRM. As the commenters pointed out, the TRA Yearbooks report load rating values for LT load range ''D'' and ''E'' tires as low as 35 psi. Hence, according to the TRA, these tires can be used at that inflation pressure at the specified load rating. Therefore, we are adopting a MAP of 35 psi for LT Load Range ''D'' and ''E'' tires as part of this final rule. (The values for P-metric and LT Load Range ''C'' tires are unchanged from the NPRM.)

Once the agency completes its analysis of the relevant data, the MAP values set forth in this final rule will be either confirmed or we will propose to modify them as part of our rulemaking response to the Alliance's petition.

5. Owner's Manual Requirements

Paragraph S4.5 of the NPRM proposed to require each certified vehicle to provide an image of the low tire pressure telltale symbol (and an image of the TPMS malfunction telltale symbol, if a dedicated telltale is utilized for this function) and the following specific, standardized statement in English regarding the presence of a TPMS in the vehicle and its function:

> Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should consult the appropriate section of this owner's manual to determine the proper tire inflation pressure.) When the low tire pressure telltale is illuminated, one or more of your tires is significantly under-inflated. You should stop and check your tires as soon as possible, and inflate them to the proper pressure. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.
>
> Your vehicle has also been equipped with a TPMS malfunction telltale to indicate when the system is not operating properly. When the malfunction telltale is illuminated, the system may not be able to detect or signal low tire pressure as intended. TPMS malfunctions may occur for a variety of reasons, including the installation of incompatible replacement tires on the vehicle. Always check the TPMS malfunction telltale after replacing one or more tires on your vehicle to ensure that the replacement tires are compatible with the TPMS.

That paragraph of the NPRM also proposed to permit the owner's manual to include additional information about the significance of the low tire pressure warning telltale illuminating, a description of corrective action to be undertaken, whether the tire pressure monitoring system functions with the vehicle's spare tire (if provided), and how to use a reset button, if one is provided (S4.5(b)). For vehicles that do not come with an owner's manual, the NPRM proposed to require the mandatory information to be provided in writing to the first purchaser (S4.5(c)).

In its comments, Nissan argued that the NRPM's proposed owner's manual statement is restrictive and would prevent manufacturers from tailoring the TPMS discussion in the owner's manual to the specific system installed on the vehicle. Nissan stated that NHTSA should refrain from adopting specific owner's manual language for TPMS, but instead provide requirements for its general content (*i.e.*, alerting consumers regarding: (1) Potential problems related to compatibility between the vehicle's TPMS and various types of replacement tires, and (2) the presence and operation of the TPMS malfunction indicator).

Nissan stated that if the agency nevertheless decides to adopt specific owner's manual language similar to that proposed in the NPRM, the following points should be considered. First, Nissan expressed concern about the use of the terms ''compatible'' and ''incompatible replacement tires'' without defining those terms. Nissan stated that consumers could be misled unless they are made aware that the purpose of this warning is to inform the consumer that the construction or other design characteristics of some replacement tires may cause the TPMS to experience inadequate signal reception. Accordingly, Nissan recommended that additional language be added to clarify the terms compatible/incompatible in the owner's manual language.

Nissan commented that the proposed owner's manual language seemed to focus on systems with a separate TPMS MIL telltale, without discussion of TPMSs providing a combination low pressure/malfunction telltale. Nissan argued that as proposed, the owner's manual language could confuse consumers whose vehicles are equipped with a combination telltale, so its comments stated that the owner's manual language should be revised to also include a discussion of the combination telltale. The comments of AIAM, Fuji, and Suzuki raised similar arguments.

In its comments, Nissan also recommended that the following sentence from the proposed owner's manual language not be included in the final rule: ''If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should consult the appropriate section of this owner's manual to determine the proper tire inflation pressure.'' Nissan stated that there is not currently any requirement to include in the owner's manual information regarding tire sizes other than those included as original equipment on the vehicle. According to Nissan, vehicle manufacturers do not and cannot provide such information for

all tires that might conceivably be used in wheel/tire/inflation pressure combinations not designed by the vehicle manufacturer, but which the consumer may nonetheless choose to install. Nissan expressed concern that such a statement could confuse consumers whose owner's manual does not include supplemental tire information.

SEMA recommended four modifications to the proposed owner's manual language. First, it stated that the owner's manual language should reflect the fact that the recommended tire pressure for the originally-installed tires may not be applicable to certain replacement tire/wheel combinations. Therefore, SEMA recommended adding a statement to ''select a tire pressure that considers the vehicle's loading characteristics and is appropriate for the wheel and tire combination installed on the vehicle.''

Second, SEMA stated that the proposed owner's manual language alerts the consumer that replacement tires may trigger the TPMS malfunction telltale, but that it does not specifically address combined wheel/tire packages. SEMA argued that because consumers frequently replace both the vehicle's tires and wheels and also can replace the wheels while maintaining the original tires, the owner's manual language should add the term ''wheels'' (to read ''tires or wheels'') in order to avoid any consumer confusion.

Third, SEMA objected to the term ''incompatible'' to describe replacement tires whose installation causes the TPMS malfunction indicator to activate. SEMA seems to be arguing that the replacement tires (and/or wheels) may be an appropriate match in terms of supporting the vehicle, but the construction nevertheless may prevent the TPMS from functioning properly. Accordingly, SEMA recommended substituting the word ''alternate'' for ''incompatible.''

Fourth, SEMA recommended that the owner's manual should note that dealers, retailers, and installers should have access to all service information necessary to make the alternate tires and wheels operate correctly in conjunction with the TPMS malfunction indicator lamp. However, SEMA stated that this recommendation would apply only if NHTSA mandates that vehicle manufacturers share such service information with other relevant parts and service suppliers.

Sumitomo urged NHTSA to modify the proposed owner's manual language to reflect the responsibility of the vehicle operator to maintain the correct tire pressure. Sumitomo argued that the NPRM could be interpreted as shifting this responsibility to the vehicle manufacturer. Therefore, Sumitomo proposed that the following additional statement be required in the owner's manual: ''The vehicle operator has the responsibility to maintain the correct tire pressure even though the tire pressure indicator warning may not be illuminated due to the lower than specified tire pressure.'' Sumitomo also recommended adding a statement to reflect the fact that the TPMS itself will not maintain correct tire pressure.

Consistent with Sumitomo's comments immediately above, the RMA stated that the owner's manual should include language explicitly stating that the TPMS does not verify that proper tire pressure is maintained (*i.e.*, even when the TPMS telltale is not illuminated, the tires may not be at optimum pressure). The RMA expressed concern that the NPRM's proposed owner's manual language could induce consumers to substitute reliance on the TPMS for routine tire maintenance.

The TIA stated the owner's manual should require a statement that even for a TPMS-equipped vehicle, the vehicle operator should check the tires regularly for proper inflation pressure and tread depth and should rotate the tires every 6,000 miles for optimum performance and fuel economy.

NADA questioned the NPRM's discussion of vehicles without an owner's manual, which NADA thought might refer to used vehicles (*see* 69 FR 55896, 55906 (Sept. 16, 2004)). NADA commented that NHTSA does not have authority to require point-of-sale dissemination of TPMS information other than through the vehicle owner's manual.

Particularly for a new safety standard for a device whose function might not be apparent to the average driver, we believe that a clear and consistent written statement in the vehicle's owners manual is necessary to explain the benefits and limitations of the TPMS and the driver's responsibility to maintain proper tire pressure. Consequently, as part of this final rule, we are including a required statement in the owner's manual (or in writing to the first purchaser for vehicles without an owner's manual).

In response to NADA's comments, we would clarify that this requirement only applies to new vehicles. Regarding NADA's comment about the requirement for a statement in writing outside the owner's manual (in cases where there is no owner's manual), we believe that this TPMS-related information is important and must be provided to the first purchaser. However, rather than requiring that vehicle manufacturers provide an owner's manual, we believe that it is preferable to allow vehicle manufacturers the flexibility to instead provide this information through a written statement.

We disagree with the comment of Nissan that the proposed owner's manual language is overly restrictive and would prevent vehicle manufacturers from tailoring the owner's manual discussion of the TPMS to the specific system installed on the vehicle. Paragraph S4.5(b) of the NPRM proposed to permit manufacturers to discuss a variety of issues related to the operation of their particular system. We believe that requiring a specified statement in the owner's manual in the final rule does not diminish the ability of vehicle manufacturers to provide explanation of the TPMS and its operation.

In response to public comments, we have made some modifications to the NPRM's proposed owner's manual statement. We have modified our discussion of ''incompatible'' replacement tires. We recognize that replacement tires may be compatible with the vehicle in terms of carrying the maximum vehicle load, but may nevertheless be incompatible with continued proper TPMS functioning. However, replacement tires that prevent proper TPMS functioning are indeed incompatible with the TPMS. With that said, we have revised the owner's manual statement to provide further clarity. We have also modified the owner's manual statement to reflect the fact that drivers frequently replace both the vehicle's tires and wheels (rims).

We have decided to include tailored language reflecting the fact that there are two options for the MIL, a dedicated TPMS malfunction telltale or inclusion as part of a combined low tire pressure/TPMS malfunction telltale.

We agree with Nissan that vehicle manufacturers are unlikely to provide recommended inflation pressures for every possible replacement tire in the vehicle owner's manual. However, it remains important for consumers to inflate their tires to a pressure level appropriate for those tires. Accordingly, we have modified the relevant statement in the owner's manual to delete the statement regarding consultation with the owner's manual to find such alternate tire pressures. We expect that consumers will be able to easily obtain the relevant pressure information from tire industry sources.

We agree with Sumitomo that it remains the driver's responsibility to maintain proper tire inflation pressure

and that the TPMS is not designed to signal as soon as the tires have deviated from the optimal inflation level, and we have added language to stress the importance of proper tire maintenance. Regarding Sumitomo's other comments that the TPMS is a detection device that does not act to add air itself to maintain inflation pressure, we believe that in the future, TPMSs may become available that combine under-inflation detection and re-inflation features; accordingly, we have decided not to opine as to future TPMS capabilities in this regard. We also agree with SEMA that some replacement tires may call for an inflation pressure different than that of the OE tires that is reflected on vehicle placard. The owner's manual statement has been revised to include language related to these points.

We have decided not to adopt TIA's recommended language concerning tire maintenance advice related to checking tread depth and rotating the tires every 6,000 miles. Although this information may be useful for voluntary inclusion in the owner's manual, we do not believe that it is necessary to require such language for the following reasons. First, we believe that discussion of other aspects of tire maintenance is outside the scope of the TPMS rulemaking. In addition, we believe that there may be reasonable differences of opinion regarding proper tread depth or frequency of tire rotation. We do not agree with the TIA's conclusion that consumers cannot be trusted to consult their vehicle's owner's manual in appropriate situations.

Regarding SEMA's recommendation to require vehicle manufacturers to make TPMS information available to tire retailers and dealers and to provide related language in the owner's manual, we are addressing that issue in this notice under section IV.C.8. Please consult that section for further details.

Accordingly, we have decided to require the following statement, in English, in the vehicle's owner's manual (or in writing for the first purchasers of vehicles without an owner's manual):

> Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should determine the proper inflation pressure for those tires.)
>
> As an added safety feature, your vehicle has been equipped with a tire pressure monitoring system (TPMS) that illuminates a low tire pressure telltale when one or more of your tires is significantly under-inflated. Accordingly, when the low tire pressure telltale illuminates, you should stop and check your tires as soon as possible, and inflate them to the proper pressure. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.
>
> Please note that the TPMS is not a substitute for proper tire maintenance, and it is the driver's responsibility to maintain correct tire pressure, even if under-inflation has not reached the level to trigger illumination of the TPMS low tire pressure telltale.
>
> [The following paragraph is required for all vehicles certified to the standard starting on September 1, 2007 and for vehicles voluntarily equipped with a compliant TPMS MIL before that time.] Your vehicle has also been equipped with a TPMS malfunction indicator to indicate when the system is not operating properly. [For vehicles with a dedicated MIL telltale, add the following statement: The TPMS malfunction indicator is provided by a separate telltale, which displays the symbol ''TPMS'' when illuminated.] [For vehicles with a combined low tire pressure/MIL telltale, add the following statement: The TPMS malfunction indicator is combined with the low tire pressure telltale. When the system detects a malfunction, the telltale will flash for approximately one minute and then remain continuously illuminated. This sequence will continue upon subsequent vehicle start-ups as long as the malfunction exists.] When the malfunction indicator is illuminated, the system may not be able to detect or signal low tire pressure as intended. TPMS malfunctions may occur for a variety of reasons, including the installation of replacement or alternate tires or wheels on the vehicle that prevent the TPMS from functioning properly. Always check the TPMS malfunction indicator after replacing one or more tires or wheels on your vehicle to ensure that the replacement or alternate tires and wheels allow the TPMS to continue to function properly.

Vehicle manufacturers may include information in the owner's manual about the time for the TPMS telltale(s) to extinguish once the low tire pressure condition or the malfunction is corrected. They may also include information in the owner's manual about the significance of the low tire pressure warning telltale illuminating, a description of corrective action to be undertaken, whether the TPMS functions with the vehicle's spare tire (if provided), and how to use a reset button (if one is provided).

6. Test Procedures

As a general comment, the Alliance argued that the NPRM's test procedures may not be sufficiently technology-neutral so as to accommodate developing and advanced TPMS technologies. In response, we note that it is NHTSA's practice to issue performance standards that meet the need for motor vehicle safety, are practicable, and are stated in objective terms. Although NHTSA tries to develop standards that are technology-neutral, that does not mean that we will sacrifice safety in order to accommodate every available technology. However, when public comments identify areas where an NPRM, such as the one for FMVSS No. 138, could be refined to promote advanced technologies without sacrificing safety, we will consider those comments carefully. Other specific comments related to the NPRM's test procedures are addressed below.

(a) *Calibration Time.* Under paragraph S6(d), the NPRM proposed a cumulative driving time of not less than 20 minutes for the ''system calibration/learning phase,'' which would include driving the vehicle in two directions on the test course. The NPRM proposed that time would not be accumulated while the vehicle's brakes are being applied.

Schrader commented that a calibration/learning phase should not be necessary, regardless of the technology used. According to Schrader, because calibration requires a significant amount of user knowledge and interaction to ensure proper performance, the TPMS should be ready to use and fulfill its intended purpose without user interaction. Schrader argued that the only time a calibration phase should be necessary is when a malfunctioning system has been repaired by a qualified technician and needs to be recalibrated in order to restore proper performance.

Sumitomo recommended that the time period for specified calibration in the test procedures should be increased to one hour, in order to reasonably accommodate indirect TPMSs and thereby keep the standard technology-neutral. Sumitomo stated that indirect TPMSs require a calibration time of at least 30 minutes under good conditions to detect 25-percent under-inflation in multiple tires, but that one hour is preferable in order to account for the variety of circumstances the system may encounter.

NIRA also recommended increasing the calibration time to one hour, in order to be comparable with NIRA's recommended detection time for low tire pressure. NIRA argued that the additional calibration time would not affect the life-saving potential of TPMSs. It also recommended that the final rule explicitly state that the calibration procedure will be conducted at normal driving speeds, at a varied speed profile, and without engagement of cruise control (if equipped).

For the final rule, NHTSA has decided to retain a 20-minute time

period for TPMS calibration as part of the standard's test procedures. We believe that a 20-minute time period is appropriate in order to provide a technology-neutral standard that accounts for the need of some TPMSs to have time to calibrate the system when the vehicle is new, when new tires are installed, and when a tire is replaced or rotated. We do not agree with Schrader's comment that calibration would require a significant amount of user knowledge and interaction to ensure proper performance. Not all TPMSs require calibration, and for those that do, a driver would most likely need to press a reset button at an appropriate point, as described in the owner's manual. We do not believe that this process would be difficult or require any specialized knowledge.

However, we are not adopting commenters' suggestions to increase the calibration time in the test procedures. We believe that an excessively long calibration period would increase the likelihood that a tire could develop a leak during calibration that would go undetected. Available information suggests that most TPMSs requiring calibration could do so within this 20-minute time period, so we do not see any reason to delay the timing for the TPMS to begin providing low tire pressure warnings to the driver.

In response to NIRA's comment that the calibration procedure should be conducted at normal driving speeds, at a varied speed profile, and without engagement of cruise control (if equipped), we note that the final rule's test procedures provide for a cumulative driving time of 20 minutes within a speed range of 50–100 km/hr. We believe that this speed range is adequate for proper TPMS calibration. However, we agree with the commenter that use of cruise control during calibration could provide the TPMS with a large amount of redundant information, as compared to information obtained while driving at different speeds, and we also believe that it is important to ensure that the system performs properly over a range of speeds, an objective that could be foiled by the use of cruise control in this context. Accordingly, we have included a statement in S5.3.2 that for vehicles equipped with cruise control, cruise control will not be engaged during testing.

(b) *Driving Conditions.* Under the test procedures section, the NPRM proposed that the ambient temperature for testing would be between 0° C (32° F) and 40° C (104° F) (*see* S5.1) and that the road surface would be dry during testing (*see* S5.2). It also proposed that the vehicle's TPMS would be calibrated and tested at speeds between 50 km/h (31.1 mph) and 100 km/h (62.2 mph) (*see* S5.3.2). The NPRM proposed that testing would be conducted on any portion of the Southern Loop of the Treadwear Test Course defined in Appendix A and Figure 2 of 49 CFR 575.104. The RMA commented that the TPMS test conditions and performance parameters should be expanded to capture a fuller range of real world driving conditions. (AAA and ETRTO provided similar comments.) Accordingly, the RMA argued that the temperature range for testing should be expanded to include ambient temperatures below freezing (32° F) and above 104° F. The RMA also advocated testing under slippery road conditions and increasing the range for the driving speed to include speeds over 100 km/hr for low tire pressure detection. The RMA argued that as currently proposed, the TPMS test procedures would not test at higher speeds (arguably when the TPMS is most important), on wet/snowy/icy roadways, under extreme temperatures, on secondary roads, or during turning or braking maneuvers. RMA stated that these conditions do not occur in isolation, but instead create situations where multiple factors contribute to an increased level of risk. (The Advocates, the EC, Public Citizen, TIA, Tire Rack, and ETRTO provided similar comments. In addition, ETRTO also called for testing at speeds below 31 mph.) VW/Audi recommended that the test procedures should incorporate a variety of speed ranges without the use of cruise control in order to be technology-neutral.

Sumitomo recommended establishing a limit in the test procedures on longitudinal acceleration. Sumitomo argued that such a limit is necessary to reflect ordinary driving conditions, so the company recommended that longitudinal acceleration should be limited to ± 0.05 G during the calibration and low tire pressure detection phases.

For the final rule, we have decided to adopt the test conditions as proposed in the NPRM. Commenters who requested a broader range of test speeds (both higher and lower) did not provide any evidence to show that the vehicle's TPMS would not function properly at vehicle speeds outside the 50–100 km/hr range. Furthermore, the commenters did not specify maximum or minimum test speeds that would ensure that real world driving conditions would be represented.

Similarly, commenters who requested a broader range of ambient temperatures for testing (both higher and lower) did not provide any evidence to show that the vehicle's TPMS would not function properly at temperatures below 0° C (32° F) or above 40° C (104° F). We believe that this temperature range covers a large percentage of the temperatures normally encountered by most of the driving public in the United States. Furthermore, the commenters did not specify an ambient temperature range that they would consider to be more appropriate.

We have decided not to include longitudinal acceleration limits in the test procedures for either system calibration or low tire pressure detection. It is our understanding that TPMS technology has improved since the time that the June 2002 final rule was published and that current systems detect and compensate for short periods of abnormal longitudinal acceleration. Accordingly, we do not believe that it is necessary to set longitudinal acceleration limits as part of the final rule.

Regarding suggestions that compliance testing should be conducted on slippery road surfaces, commenters did not provide any evidence to show that the TPMS would not function normally on road surfaces with a coefficient of friction lower than the coefficient of friction of the road surface during compliance testing. Although surfaces with a lower coefficient of friction may result in increased wheel slip, which in turn could result in a slightly longer time to detect low tire pressure, we do not anticipate that additional safety benefits would arise from testing on slippery surfaces. Furthermore, the commenters did not specify a coefficient of friction or provide any other quantification for the recommended surface.

We believe that the test conditions specified in this final rule will result in robust TPMSs that will function normally over a wide range of operating conditions. We do not believe that additional specifications related to temperature, weather, or speed would appreciably change the TPMS's performance or result in design changes yielding greater safety benefits.

(c) *MIL Activation.* Under paragraph S6(l) of the proposed test procedures, the TPMS malfunction indicator would be tested by simulating one or more TPMS malfunction(s) by disconnecting the power source to any TPMS component, disconnecting any electrical connection between TPMS components, by simulating a TPMS sensor malfunction, or by installing a tire on the vehicle that is incompatible with the TPMS (S6(l)(1)). When the ignition locking system is turned to the ''On'' (''Run'') position (or, where appropriate,

the position for lamp check), the TPMS malfunction telltale would be required to illuminate (S6(l)(2)). The NPRM also proposed that for systems equipped a TPMS reset feature to extinguish the low tire pressure and/or malfunction telltale, the system would be reset in accordance with the manufacturer's instructions, after which, continued illumination of the MIL would be verified (S6(l)(3)). Finally, the proposal stated that the malfunction would be corrected, that the system would be reset (if necessary), and that there would be verification that the telltale has been extinguished (S6(l)(4)).

Public comments on this issue relate to the previous discussion of what types of malfunctions the system should be required to detect and how quickly they should be detected. EnTire provided draft regulatory text for the portion of the standard's test procedures related to the TPMS malfunction indicator. The following paraphrases EnTire's recommended approach for the final rule on this issue. First, disable one of the following TPMS functions: (a) Control/transmission of information to the low pressure lamp; (b) transmission of pressure data from a sensor; or (c) capability of the controller to receive pressure information. Verify that the TPMS telltale(s) perform the check of lamp function. Drive for 15 minutes or until the malfunction lamp illuminates. If the MIL did not illuminate within that time period, reverse direction and drive for up to a total cumulative time of 20 minutes or until the MIL illuminates. If the MIL does not illuminate, discontinue the test. If the MIL does illuminate, restore the system to normal operation. Drive for up to 15 minutes or until the malfunction lamp extinguishes. If the MIL did not extinguish within that time period, reverse direction and drive for up to a total cumulative time of 20 minutes.

EnTire argued that this approach would resolve a number of questions which EnTire believes were left unanswered by the NPRM. According to EnTire, by focusing on the primary TPMS functions, it would clarify what malfunctions must be detected by the system. It would specify a time for the TPMS to discover the malfunction. It would specify that the vehicle is to be driven, because vehicular motion is necessary for many systems to run malfunction diagnostics. It would provide for verification of both the MIL lamp check and malfunction indication.

EnTire also stated that because various malfunction conditions may require different recovery mechanisms to take place, the driving sequence for extinguishment may be avoided or reduced if the standard were to permit reference to additional instructions in the owner's manual procedures (if applicable).

In its comments, NIRA Dynamics recommended that the final rule's test procedures should simulate a TPMS malfunction by disconnecting the power source to any TPMS component or by disconnecting any electrical connection between TPMS components, thereby limiting the requirements to only electrical and radio transmission errors. NIRA stated that the test procedures should be limited to detection of these types of malfunctions in order to keep the test procedures technology-neutral.

Related to its earlier comments on the types of malfunctions that the system should be required to detect, Fuji commented that the proposed test procedures may involve disconnecting the power to the TPMS ECM, but that such action could make it impossible for the system's malfunction logic to operate.

GM recommended adding 30 minutes of cumulative driving time for malfunction detection, under S6(l)(2) of the NPRM's proposed test procedures, in order to ensure that the TPMS has time to accumulate sufficient data to make a sound decision about whether a malfunction has occurred. The Alliance recommended a similar period of 30 minutes of continuous driving under S6(l)(4), in order to allow the TPMS the time necessary to confirm that a malfunction no longer exists.

Fuji's comments made similar arguments, stating that in order to provide a reasonable battery life (8–10 years) for the wheel-mounted pressure sensors and transmitters, it and other vehicle manufacturers have designed their TPMSs to have the wheel sensors remain inactive until wheel rotation is above 40 kph. Fuji also commented that vehicle motion is required for the TPMS to begin its diagnostic cycle, along with a sufficient time period to make a reliable diagnosis of the malfunction. Accordingly, Fuji recommended that the final rule's test procedures include a drive time of at least 10 minutes with a vehicle speed of at least 40 kph.

Nissan also commented that the test procedures related to malfunction detection should specify a time for detection and vehicle speed. Nissan recommended that the TPMS should be required to detect a malfunction under the same conditions and same timeframe as that required for detection of low tire pressure (*i.e.*, within 10 minutes at speeds between 50 km/hr and 100 km/hr).

In its comments, Schrader urged NHTSA to clarify its ''confusing'' test procedures related to TPMS malfunction detection. Schrader recommended that the TPMS test procedures should limit the simulation of a malfunction to removal of a component from the system.

As noted above, the comments on the test procedures for the TPMS malfunction indicator intertwined substantive discussions of what types of malfunctions the system would be required to detect with procedural discussions of how the standard's test procedures would create those malfunctions and confirm that the TPMS can detect them. However, the substantive issue of what types of malfunctions the system must detect has been addressed in Section IV.C.2(b); that discussion will not be repeated here. Similarly, the time period for the TPMS to detect a system malfunction and to illuminate the MIL, was discussed in Section IV.C.2(a). For a complete discussion of those aspects of the test procedures, please consult those sections of this final rule.

We recognize that most direct and indirect TPMSs will require that the vehicle be driven in order for the system to detect malfunctions. Commenters such as Nissan stated that most TPMSs use the same analytical processes for TPMS malfunction detection as they would for low tire pressure detection. Therefore, even though some commenters (*e.g.*, Fuji, Nissan) suggested that malfunction detection would be possible for certain systems within a shorter timeframe, we have decided to adopt the same 20-minute driving time for TPMS malfunction detection as for the low tire pressure warning. In addition, we have incorporated the same test conditions (with some minor modification) as were proposed in S5 of the NPRM, including the requirement that the vehicle will be driven within a speed range of 50–100 km/hr, with no time accumulating when the service brake is applied. Again, we recognize that most TPMSs will require vehicular motion to detect that a TPMS malfunction has been corrected as well.

Regarding EnTire's suggestion that there should be a specification for a MIL bulb check, such a requirement was already proposed in S6(b) of the NPRM, and it has been retained in this final rule. Further, we are not adopting EnTire's recommendation that the owner's manual be consulted for additional instructions related to operation of the MIL because we do not believe it is necessary. We believe that the final rule's requirements for MIL operation will provide a simple, consistent, and timely warning to the

driver in the event of a TPMS malfunction.

(d) *Vehicle Cool-Down Period.* Under S6(e) of the NPRM, the vehicle would be stopped and kept stationary with the engine off for up to one hour, after which time one or more tires would be deflated to 7 kPa (1 psi) below the level that should cause the TPMS low pressure warning telltale to illuminate. This provision would allow the tires time to cool prior to initiating the system detection phase of testing.

In its comments, the Alliance recommended reducing the cool-down period in S6(e) from ''up to one hour'' to ''up to five minutes.'' The Alliance argued that, as currently proposed, this cool-down period could make the rule technology-dependent, because only direct TPMSs could comply. According to the Alliance's understanding, air would be let out of the vehicle's tire(s) after the cooling-down period, but some systems may not be able to detect the changes immediately, and by the time they can, the tires may have warmed up to a level above the warning threshold. However, the Alliance stated that if the test is conducted with tires that were under-inflated just after having been warmed up during the calibration phase, then those systems should be able to detect the differential.

As a related matter, the Alliance argued that proposed S6(f)(3) of the NPRM, which provides instructions in the event that the TPMS low pressure telltale fails to illuminate after the tires are deflated and the vehicle is driven as required, should be revised to provide for an additional check of the tires' inflation pressures prior to discontinuing the test. The Alliance stated that it is requesting this change to avoid incorrect findings of noncompliance in cases where the tire inflation pressure is higher than the required TPMS activation threshold due to a tire temperature increase as a result of driving, ambient temperature changes, or a difference in temperature from the road surface in a stationary location to that of the test road surface. The Alliance recommended similar modifications to proposed paragraph S6(g).

NIRA Dynamics made a similar comment, arguing that the portion of the NPRM's test procedures in which the tires are deflated could conceivably result in tires inflated above the warning threshold during the test. According to NIRA, tests have shown that tire pressure increases due to temperature changes after rapid deflation, which can negate the pressure change to some extent. Therefore, NIRA Dynamics recommended that the tire pressure be decreased to 2 psi below the warning threshold, and that if the TPMS does not issue a warning during the test, the tire pressure should be double-checked. Similarly, VW/Audi recommended that the final rule should provide no more than five minutes to adjust and check the tires' inflation pressures before starting the system detection phase, and it supported decreasing the tire pressure to 2 psi below the warning threshold.

Sumitomo stated that its experience has shown that it can take several minutes for the tire pressure to become stable after being set to a certain value. Thus, Sumitomo recommended that the test procedures be modified to set the tire 1 psi below the activation pressure, wait three minutes, and then verify the tire pressure to ensure that the pressure has been accurately set.

In order to compensate for the temperature effects discussed by the Alliance, NIRA Dynamics, VW/Audi, and Sumitomo, we have decided to reduce the tire cool-down period in S6(e) from ''up to one hour'' to ''up to five minutes,'' as requested by the commenters. We believe that the pressure differential between cold tire inflation pressure and running tire inflation pressure is approximately 8–10 percent. Therefore, tires that have their pressure reduced to the TPMS activation pressure while cold may experience a tire pressure increase once the vehicle has been driven for a short period of time, and this increase in pressure may prevent the TPMS from providing the low tire pressure warning.

Regarding the commenters' recommendations for a decrease in the tire pressure deflation in S6(e) from the current 1 psi below the TPMS activation threshold to 2 psi below that level and for an additional pressure check, we have decided to adopt the 2 psi recommendation. We believe that this modification would be sufficient to account for the temperature effect described by the commenters without the need for additional pressure checks.

(e) *Testing with Pressures Other Than Placard Pressure.* Under S6 of the NPRM, the proposed test procedures set placard pressure as the baseline for inflating and deflating tires during testing.

The Alliance argued that because FMVSS No. 110 requires the new tire pressure label to specify only one recommended pressure, other recommended pressures for special conditions (*e.g.*, extreme temperatures, heavy loads, off-road use) must now be provided in the owner's manual. Accordingly, the Alliance recommended revising the test procedures to provide that in conducting testing, NHTSA would consult the owner's manual and, if covered special conditions are present, use the inflation pressures specified for such conditions in lieu of the placard pressure. (Porsche and VW/Audi provided similar comments.) Schrader commented that TPMSs should accommodate drivers' needs to change inflation pressures to match the load on the tires.

We are not adopting the commenters' recommendations regarding testing at pressures other than placard pressure, because we do not believe that any of the above-described ''special conditions'' are likely to occur during compliance testing.

(f) *System Reset.* As reflected in the NPRM, the agency recognizes that many TPMSs are equipped with a system reset feature that must be used in appropriate circumstances. This understanding is reflected in the NPRM's test procedures, which refer to reset at S6(c), (i), (j), and (l).

Several commenters discussed what they perceived to be an error in paragraph S6(i) of the test procedures, which discusses action to be taken at the end of the system detection phase (*i.e.*, after point at which the low pressure telltale should have illuminated but prior to re-inflation of the tires). As proposed, that provision provided, ''If the vehicle's TPMS has a manual reset feature, attempt to reset the system in accordance with instructions specified in the vehicle owner's manual prior to re-inflating the vehicle's tires. If the low tire pressure telltale illuminates, discontinue the test.''

The Alliance recommended elimination of S6(i) because it seems to imply that an owner may extinguish the TPMS low pressure telltale without correcting the under-inflation condition. According to the Alliance, manufacturers' recommended procedures for TPMS reset require that the manual reset procedure be performed only after correcting the inflation pressure. Continental Teves, Schrader, Sumitomo, and VW/Audi also raised this issue.

Paragraph S6(c) of the NPRM proposed the following language, ''If applicable, reset the tire pressure monitoring system in accordance with the instructions in the vehicle owner's manual. The Alliance recommended modifying S6(c) to specify that the system will be ''set or reset.''

BMW raised a more substantive argument regarding system reset, stating that a manufacturer should be permitted to incorporate a TPMS reset feature to accommodate situations such as a consumer switching between summer

and winter tires. According to BMW, the reset would allow the system to calibrate immediately after the tire change. BMW commented that if the agency is seriously concerned about driver misuse of a reset, NHTSA should consider a requirement that would prevent TPMS reset from the driver's seat.

After further consideration on the issue of system reset, we have decided to delete the provision contained at S6(i) of the NPRM. Because some TPMSs cannot determine tire pressure in individual tires, these systems cannot detect correction of the under-inflation situation (and extinguish the low tire pressure telltale) without resetting the system. In light of the information presented by the commenters, we have decided not to test whether the TPMS telltale will extinguish after the system is reset. We expect that, for vehicles equipped with a reset, the owner's manual would have instructions for the proper use of the reset feature (*e.g.*, stating that the driver should re-inflate the tires to the proper level before resetting the system).

Regarding BMW's comment on the permissibility of a TPMS that may be reprogrammed or reset to accommodate different tires, we leave that decision to the vehicle manufacturer. As noted previously, NHTSA will conduct compliance testing with the tires installed on the vehicle at the time of initial sale.

Regarding the Alliance's request to modify the language of S6(c), we have decided to adopt the Alliance's recommended language, although we believe that the Alliance's request largely involves semantics.

7. Lead Time and Phase-In

The NPRM proposed the following schedule for compliance with the TPMS standard: 50 percent of a vehicle manufacturer's light vehicles would be required to comply with the standard during the first year (September 1, 2005 to August 31, 2006); 90 percent during the second year (September 1, 2006 to August 31, 2007); all light vehicles thereafter (*see* S7). The proposal stated that carry-forward credits would be provided for vehicles certified as complying with the standard that are produced after the effective date of the final rule.

The NPRM's proposed schedule for lead time and phase-in was based upon information that the agency obtained from September 2003 Special Orders to 14 vehicle manufacturers (regarding their production plans for TPMS at the time of the Second Circuit's decision) and to 13 TPMS manufacturers (regarding their production capacity). From the responses to these Special Orders, NHTSA learned that, in anticipation of the start of the phase-in under the June 2002 final rule, most vehicle manufacturers were moving aggressively toward installation of TPMSs capable of meeting the four-tire, 25-percent under-inflation detection requirement, but some were not. The information provided by TPMS suppliers indicated sufficient capacity to supply TPMSs with a four-tire, 25-percent detection capability in quantities that would easily meet the newly proposed phase-in requirements.

In general, most of the vehicle manufacturers that commented on the NPRM, as well as the Alliance, requested additional lead time and a modified phase-in schedule. Public interest groups, such as the Advocates, expressed support for the NPRM's compliance schedule, as proposed. Specific comments and recommendations regarding lead time and the phase-in are discussed immediately below.

(a) *Lead Time.* The Alliance recommended that the final rule include a two-year phase-in for compliance beginning on September 1, 2006. It stated that the agency could encourage early compliance by making phase-in credits available for compliant vehicles built after publication of the final rule. However, the Alliance made its lead time and phase-in recommendations contingent upon its assumption that the agency would defer the proposed MIL and related owner's manual provisions until September 1, 2007.

The Alliance stated that the NPRM's prohibition against a telltale that changes color from yellow to red at increasingly low tire pressure levels will require manufacturers to add an additional telltale to the instrument panel. According to the Alliance, instrument panel redesign requires one to four years of lead time, so this change could not be accomplished before September 1, 2007.

Similar comments about lead time were provided by AIAM, DaimlerChrysler, Fuji, GM, Hyundai, Porsche, Suzuki, VW/Audi, and Sumitomo. For example, the AIAM stated that the proposed MIL requirements could dictate redesign of vehicle dashboards and necessitate new software and hardware. AIAM also argued that changes to the owner's manual cannot be accomplished quickly, and that the owner's manuals for some MY 2006 vehicles have already gone to print. As a further example, Fuji argued that the proposed MIL requirements would necessitate substantial changes in ECM logic and circuitry, which will require additional design, calibration, testing, and incorporation by suppliers.

The Alliance commented that, because of the need to lock in production-related decisions for MY 2006, if a final rule were issued later than December 2004, a phase-in beginning in September 2005 would only be feasible if the technical provisions of the new final rule would allow compliance certification for all systems currently in production that were designed in accordance with the carryover provisions of the June 5, 2002 final rule for TPMS, without any revision. (GM and the AIAM each made a similar comment.)

The Alliance also stated that under the Safety Act, a Federal motor vehicle safety standard may not become effective in less than 180 days.[50] (The Alliance stated that its member companies will require the full 180 days in order to complete certification testing and documentation after the new standard is promulgated.) Therefore, the Alliance argued that, as a legal matter, March 1, 2005 is the latest date that the agency can issue a final rule and have it be effective on September 1, 2005. Once again, the Alliance commented that its statements regarding a September 2005 date for the start of compliance assumes deferral of compliance with the MIL provisions and related owner's manual language until September 1, 2007. (AIAM, BMW, Honda, Mitsubishi, Nissan, and Suzuki provided similar comments.)

The Alliance also commented that the agency should make FMVSS No. 138 a test case for the proposed revisions to 49 CFR Part 568 that would allow final stage manufacturers and alterers, many of which are small businesses, an extra year for compliance.

DaimlerChrysler commented that even if the agency were to publish a final rule in Spring 2005 that was identical to the September 2004 NPRM, the company could not implement the MIL provisions in time for MY 2006. DaimlerChrysler stated that close to two years is needed to convert an assembly plant in order to accommodate a TPMS component into the assembly line, and 9–12 months is needed to accommodate the newly proposed MIL requirement.

In its comments, General Motors stated that it would require 24 months from publication of a final rule to the effective date in order to meet the requirements of the new proposal. GM stated that this time period includes 18 months to engineer, prototype, tool, and

[50] 49 U.S.C. 30111(d).

validate the system, and six months to go from vehicle validation test completion to production.

Hyundai stated that NHTSA should extend the compliance date in the final rule to September 1, 2007, but dispense with the phase-in and instead require full compliance by that date.

After careful consideration of the public comments related to lead time, we have decided to begin mandatory compliance (with a modified phase-in discussed below) on October 5, 2005, but to defer compliance with the standard's MIL requirements until September 1, 2007. The reasons for this decision are as follows.

The proposed requirements for the TPMS to detect low tire pressure (*i.e.*, a four-tire, 25-percent under-inflation detection capability) should have come as no surprise to vehicle manufacturers, because the Second Circuit's opinion in *Public Citizen* v. *Mineta* made clear that the standard would require a system with a four-tire detection capability, and the NPRM's proposed four-tire, 25-percent requirement harkened all the way back to the June 2002 final rule.

The September 2004 NPRM also clearly indicated to the industry that NHTSA intended to specify requirements for TPMSs beginning with MY 2006. Furthermore, vehicle manufacturers' own production data, as contained in the September 2003 Special Orders, demonstrated that at that time, the industry was well on its way in terms of planning for incorporation of TPMSs with a four-tire, 25-percent under-inflation detection capability.

In addition, we do not agree with the Alliance's argument that additional lead time should be provided because manufacturers may wish to incorporate a second red lamp to indicate extremely low tire pressure; such a lamp is not required under the standard.

However, we recognize that vehicle manufacturers could not be certain of the exact details of the final rule until publication of this notice. Therefore, in consideration of the changes made to this final rule (as described below, including deferral of the TPMS MIL requirements and associated owner's manual requirements), we have made adjustments to the percentages specified for light vehicle compliance with the phase-in in order to maintain Fall 2005 compliance date proposed in the NPRM. In an additional effort to maintain a Fall 2005 compliance date, as further described below, we have decided to permit vehicle manufacturers to earn carry-forward credits and carry-backward credits (*i.e.*, reduce compliance during the first year of the phase-in and increase compliance by a corresponding amount during the second year of the phase-in). We believe that these changes in the final rule effectively resolve manufacturers' lead time concerns. Consequently, we see no reason to delay implementation of the standard for an additional year in response to the arguments raised by the commenters.

Regarding the TPMS MIL, we understand that the TPMS malfunction indicator represents a new requirement that was not present prior to the September 2004 NPRM, and that implementation of the MIL requirements may necessitate significant design and production changes (*e.g.*, redesign of vehicle dashboards, new software and hardware). Therefore, it may not be practicable for vehicle manufacturers to comply with the TPMS MIL requirements by the start of the phase-in. We believe that the recommendation of at least 24 months lead time for the TPMS MIL is reasonable.

In addition, as reflected in the Final Regulatory Impact Analysis for this rulemaking, the incremental benefits associated with the MIL are expected to be small in comparison to those provided by the system's low tire pressure warning. The TPMS MIL is expected to account for 0.677 percent of the final rule's estimated benefits, which equates to 1 fatality and 57 injuries prevented per year (*see* page VII–12 of the FRIA). Extrapolating from the figures provided in the FRIA, we believe that delaying the final rule until vehicle manufacturers could have a compliant TPMS MIL in place (*i.e.*, delaying the 20-percent phase-in in MY 2006 and the 70-percent phase-in in MY 2007) would lead to an estimated 107 fatalities and 7,536 injuries that could have been prevented if TPMSs without an MIL were provided in vehicles under the final rule's phase-in (with benefits accruing over the life of vehicles so equipped). Accordingly, we believe that it would be more advantageous to have TPMSs (without an MIL) to begin being incorporated in new light vehicles sooner, rather than defer implementation of the entire standard. For these reasons, we believe that a compliance date of September 1, 2007 for the standard's MIL requirements (including associated owner's manual requirements) would be both practicable and maximize safety benefits under the standard.

In response to the Alliance's comment that, by statute, a safety standard may not become effective less than 180 days after the standard is prescribed (*see* 49 U.S.C. 30111(d)), we have decided to postpone the start of compliance until 180 days after publication of this final rule. In order to better coincide with manufacturer production schedules, we have scheduled the second part of the phase-in to begin on September 1, 2006. However, if the agency is forced to postpone this compliance date for an additional year (*i.e.*, eliminate the 20-percent compliance requirement for MY 2006), we would expect to lose 24 lives, a result that could be prevented if the vehicles subject to a phase-in commencing in Fall 2005 were equipped with a TPMS that could provide a low tire pressure warning to the driver. Such delay would also be expected to result in 1,675 more injuries than otherwise would have occurred.

We believe that other changes between the June 2002 final rule and today's final rule for TPMS are relatively minor, and do not constitute major new and unexpected structural requirements. However, after considering public comments, we have sought to accommodate these changes through modifications in the phase-in schedule, as discussed in the next section below. Specifically, we have modified the compliance percentages of the phase-in, which should ease implementation.

Furthermore, manufacturers have known since at least August 2003 that a TPMS with a four-tire detection capability would be required and that there would likely be a requirement for 25-percent under-inflation detection. These expectations were confirmed in the September 2004 NPRM, which included a proposed phase-in beginning September 1, 2005; manufacturers have not suggested that TPMS technologies are unavailable to meet those requirements. And once again we note that vehicle manufacturers' own production data, as contained their responses to the September 2003 Special Orders, demonstrated that at that time, most of the industry was moving aggressively in terms of planning for incorporation of TPMSs with a four-tire, 25-percent under-inflation detection capability. The Alliance's argument suggests that vehicle manufacturers have disregarded all of the knowledge they have gained about the eventual TPMS standard since the time of the Second Circuit's decision, including their own production plans.

In addition, the Alliance has not provided any evidence to demonstrate that their members could not meet a Fall 2005 compliance date, other than to assert that they will require the full 180 days. The Alliance's comments also intimate that a September 1, 2005

phase-in would be feasible ''if the technical provisions of the new Final Rule allow compliance certification by all systems currently in production that were designed in accordance with the carryover provisions of the 2002 Final Rule, without any revision'' (which included a four-tire, 25-percent under-inflation detection option). Furthermore, we believe that concerns related to lead time are either rendered moot or significantly mitigated by the final rule's allowance of both carry-forward and carry-backward credits. For these reasons, we have decided to require compliance with the requirements of the standard beginning on October 5, 2005.

In order to ease implementation, NHTSA has decided to permit vehicle manufacturers to earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements, that are manufactured between the effective date of this rule and the conclusion of the phase-in.[51] These carry-forward credits could be used during the phase-in, but they could not be used to delay compliance certification for vehicles produced at the conclusion of the phase-in. Except for vehicles produced by final-stage manufacturers and alterers (who receive an additional year for compliance), all covered vehicles must comply with FMVSS No. 138 on September 1, 2007, without use of any carry-forward credits.

Furthermore, we have determined that there is good cause to make this final rule effective upon publication so that vehicle manufacturers would have a standard in effect to which they may certify vehicles for purposes of early, voluntary compliance and to maximize the time for earning carry-forward credits. Providing this earlier effective date may cause some vehicles to be equipped with TPMSs that otherwise might not have been, thereby advancing the safety goals of the standard. We explicitly note that vehicle manufacturers have no mandatory compliance responsibilities under the standard until the start of the phase-in.

To further ease implementation and to maintain a Fall 2005 compliance date, we have decided also to provide carry-backward credits, whereby vehicle manufacturers may defer compliance with a part or all of the certification requirements for the first period of the phase-in, provided that they certify a correspondingly increased number of vehicles under the standard during the second period of the phase-in. Stated another way, carry-backward credits allow for under-compliance in the first period of the phase-in, provided that there is corresponding, compensating over-compliance in the second period of the phase-in. For example, if a vehicle manufacturer anticipated production problems in terms of incorporating compliant TPMSs into vehicles produced from October 5, 2005, through August 31, 2006 (*i.e.,* MY 2006), it could choose to certify 10 percent of its light vehicles to the standard during that period and commit to certifying 80 percent of its light vehicles manufactured from September 1, 2006 through August 31, 2007 (*i.e.,* MY 2007). We believe that permitting carry-backward credits would not impact the overall safety benefits of the final rule, because the same number of vehicles would be subject to compliance certification, although the distribution may vary over the model years of the phase-in. Corresponding changes have been added to the regulatory text of both FMVSS No. 138, as well as the TPMS phase-in requirements contained in 49 CFR Part 585.

In addition, since the NPRM was published, NHTSA has issued a final rule pertaining to certification requirements for vehicles built in two or more stages and altered vehicles (*see* 70 FR 7414 (Feb. 14, 2005)). The amendments made in that final rule become effective September 1, 2006. In relevant part, the multi-stage certification final rule amended 49 CFR 571.8, *Effective Date,* and it added a new subparagraph (b) providing as follows:

> (b) *Vehicles built in two or more stages vehicles and altered vehicles.* Unless Congress directs or the agency expressly determines that this paragraph does not apply, the date for manufacturer certification of compliance with any standard, or amendment to a standard, that is issued on or after September 1, 2006 is, insofar as its application to intermediate and final-stage manufacturers and alterers is concerned, one year after the last applicable date for manufacturer certification of compliance. Nothing in this provision shall be construed as prohibiting earlier compliance with the standard or amendment or as precluding NHTSA from extending a compliance effective date for intermediate and final-stage manufacturers and alterers by more than one year.

In light of the agency's policy on multi-stage manufacturer certification, as expressed in the February 14, 2005 final rule, we have decided to adopt the Alliance's suggestion and to apply that principle to the compliance certification requirement for final-stage manufacturers and alterers under the TPMS standard. Thus, the final rule for TPMS is requiring final-stage manufacturers and alterers to certify compliance for all covered vehicles manufacturers on or after September 1, 2008. However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date (although no carry-forward credits would accrue in this case).

(b) *Phase-In Schedule.* In their comments, vehicle manufacturers and the Alliance generally favored modification of the phase-in schedule set forth in the NPRM. The following summarizes the commenters' recommendations regarding the phase-in schedule. It should be noted that, unless otherwise indicated, the phase-in percentages specified below are exclusive of requirements related to the malfunction indicator, compliance with which manufacturers argued should be postponed until the end of the phase-in period.

The Alliance recommended that 65 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007. The Alliance stated that this schedule would accommodate its member companies' different stages of readiness in terms of developing and producing large numbers of compliant TPMSs. The Alliance also argued that the agency has based its phase-in schedule on the responses to NHTSA's September 2003 TPMS Special Orders; however, the response to those Special Orders rested on certain vehicle manufacturer assumptions that have not proven true (*e.g.,* that carry-forward credits would be available from the Fall of 2002, that indirect TPMSs could be used to comply with the rule). In addition, the Alliance commented that the MIL provisions are new to the NPRM and will require redesigns by manufacturers.

In addition, Mitsubishi commented that business circumstances since the time of the Special Order have resulted in changes in product plans, which have impacted installation of TPMSs, and Mitsubishi stated that it uses different TPMS technology in each of its models, a factor which contributes to the need for longer lead time.

AIAM recommended that 50 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007.

BMW recommended that 35 percent of covered vehicles should be required to comply in September 2005, that 70 percent of covered vehicles should be

[51] Any such certification of compliance with the standard is irrevocable.

required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007.

DaimlerChrysler recommended the following phase-in schedules if the proposed MIL are required at the start of the phase-in. If carry-forward credits are permitted, DaimlerChrysler recommended that 70 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007. If carry-forward credits are not permitted, DaimlerChrysler recommended that 50 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007.

If the MIL requirements are deferred to the end of the phase-in, DaimlerChrysler stated that it could support a recommendation that 30 percent of covered vehicles should be required to comply in September 2005, that 70 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007.

Hyundai recommended that 100 percent of covered vehicles should be required to comply in September 2007, without any phase-in.

Mitsubishi recommended that 50 percent of covered vehicles should be required to comply in September 2005, that 70 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007.

Porsche recommended that 65 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007. Porsche stated that if a three-year phase-in is necessary, it recommended a 10–50–100% phase-in schedule, which is consistent with the June 2002 final rule.

Fuji offered two recommended options for the phase-in. Under Option 1, Fuji recommended that 50 percent of covered vehicles should be required to comply in September 2006, that 90 percent of covered vehicles should be required to comply in September 2007, and that 100 percent of covered vehicles should be required to comply in September 2008. Under Option 2, Fuji recommended that 100 percent of covered vehicles should be required to comply in September 2007, without any phase-in.

VW/Audi recommended that 40 percent of covered vehicles should be required to comply in September 2006, and that 100 percent of covered vehicles should be required to comply in September 2007. VW/Audi's recommended schedule would include a MIL (consistent with its suggested changes). VW/Audi stated its belief that it would be preferable to postpone the phase-in until 2006 and require TPMSs with a MIL at that time, rather than begin the phase-in in 2005 and allow TPMSs without a MIL.

After carefully considering all available information, we have decided to require a phase-in schedule for FMVSS No. 138 as follows: 20 percent of a vehicle manufacturer's light vehicles must comply with the standard during the period from October 5, 2005, to August 31, 2006; 70 percent during the period from September 1, 2006 to August 31, 2007, and all light vehicles thereafter. However, compliance with the standard's requirements for the TPMS malfunction indicator and related owner's manual language would be deferred until September 1, 2007, at which time those provisions also would be mandatory for all light vehicles.

For the reasons discussed under the Lead Time section immediately above, we believe that this final rule, as modified, provides manufacturers with sufficient lead time to begin a October 5, 2005, phase-in of the core requirements of the TPMS standard (*i.e.,* implementing the standard's low pressure detection requirements but briefly deferring implementation of the new requirements for the MIL and related owner's manual language). Once again, the requirements of the final rule are not drastically different from those of the (subsequently vacated) standard established by the June 2002 final rule, except for the deletion of the one-tire, 30-percent detection option and the addition of the MIL requirements. The Special Orders demonstrated that in Fall 2003, most vehicle manufacturers were moving aggressively towards TPMSs with a four-tire, 25-percent under-inflation detection capability and suppliers had sufficient capacity to meet demand. The direction of this rulemaking, in terms of a system with a four-tire, 25-percent detection capability, was again expressed in the September 2004 NPRM. In addition, some manufacturers (*e.g.,* BMW, Mitsubishi) stated in their comments that they could begin certification to the standard in September 2005, provided that the MIL requirements and related owner's manual language requirements are deferred.

However, based upon the information provided by the manufacturers and the rapidly approaching start of the 2006 Model Year, we have decided to modify the phase-in percentages from those contained in the NPRM. Particularly at this stage in a vehicle manufacturer's normal production cycle, a phase-in starting at 50 percent of production may not be practicable, so we have lowered that percentage to 20 percent. For similar reasons, we have also decided to modify the second year's phase-in percentage to 70 percent from 90 percent.

Regarding the MIL requirements, vehicle manufacturers have commented that it would be possible to implement the necessary software and hardware changes fully by the conclusion of the phase-in on September 1, 2007. (No additional phase-in is being provided for the MIL requirements.) We believe that that timeframe is reasonable, in light of the technical and production challenges associated with incorporating the MIL. As a related matter, it would make little sense to include owner's manual language for the MIL until that feature is actually incorporated into the vehicle; therefore, the requirements for owner's manual language related to the MIL are similarly deferred until the conclusion of the phase-in.

As a technical matter, we note that on December 8, 2004, NHTSA published a final rule that, among other things, consolidated the phase-in reporting requirements for various standards by revising 49 CFR part 585 (69 FR 70904). The amendments in that final rule become effective on September 1, 2005. Accordingly, we have decided to make the TPMS final rule's amendments to part 585 for the TPMS phase-in reporting requirements effective that same day (*i.e.,* September 1, 2005). We do not anticipate that this delay in the effective date for the part 585 amendments will cause any problems, because not only does it coincide with the start of the TPMS phase-in, but also vehicle manufacturers are not expected to do any actual phase-in reporting until 2006. However, the details of the reporting requirements are available for recordkeeping purposes in the interim, something that may be of interest to manufacturers seeking carry forward credits for early, voluntary compliance.

8. Small Business Impacts

In the NPRM, the agency tentatively concluded that the proposal would not have a significant economic impact upon a substantial number of small entities.

SEMA's comments expressed disagreement with the NPRM's preliminary conclusion that the TPMS proposal would not have a significant economic impact upon a substantial number of small businesses. SEMA represents over 550 companies that manufacture, distribute, retail, and install tire, wheel, and tire/wheel accessories, most of which are defined as ''small businesses.''

Specifically, SEMA challenged the NPRM's contention that the proposal would not have a significant impact upon aftermarket wheel and rim manufacturers because the proposal does not contain requirements for spare tires and rims. SEMA argued that the proposal would indeed have an impact upon these manufacturers, because: (1) The NPRM would cover replacement tires and wheels installed by dealerships prior to first sale, and (2) the service industry would need to make sure that the malfunction telltale does not illuminate when one or more tires are replaced.

According to SEMA, for replacement tires and wheels to work in conjunction with the OEM-installed TPMS, these aftermarket manufacturers may need to institute numerous and potentially costly changes, including equipment redesign, production retooling, and recall of noncompliant equipment. Furthermore, SEMA argued that the proposed TPMS standard could force small business installers of aftermarket wheel/tire combinations (*e.g.*, automobile dealerships, tire shops, repair shops) to invest in computer diagnostic equipment and employee training in order to access, service, repair, install, and calibrate these TPMSs. Failure to take these steps could cause these businesses to violate the relevant statutory provisions prohibiting the manufacture/sale/importation of noncomplying motor vehicles [52] and prohibiting actions that knowingly make inoperative safety devices and elements inoperative.[53]

In addition, SEMA stated that consumers would have legitimate expectations that the TPMS will continue to operate properly with replacement tires and wheels, and the aftermarket industry would be faced with product liability exposure.

SEMA recommended that NHTSA consider alternative approaches, as outlined in its comments, in order to limit the impacts of the TPMS rule on the small business community. As discussed previously, SEMA recommended that vehicle manufacturers should be required to share with retailers, installers, and consumers, in a timely and affordable manner, all servicing information needed to operate a compliant TPMS. SEMA suggested that NHTSA consult with the Environmental Protection Agency (EPA) for guidance, because, according to SEMA, EPA has required vehicle manufacturers to share on-board diagnostic system (OBD) information with the service and repair industry in a timely and cost-effective manner.

SEMA's recommendations sought to ensure that manufacturers develop transparent and minimally burdensome processes for TPMS maintenance and repair. Specifically, SEMA commented that vehicle manufacturers should be required to comply with applicable Society of Automotive Engineers and European Union (EU) standards governing the design of wheel mounting pockets in order to facilitate transferal of sensors from the OE tires/wheels to replacement tires/wheels (no references provided). SEMA stated that communications protocols should be standardized so as to facilitate the use of aftermarket sensors, and that recalibration processes should be straightforward. SEMA also recommended that manufacturers should be prohibited from requiring special tools for TPMS reprogramming or utilizing encrypted systems that would prevent installation of aftermarket products.

According to SEMA, if these changes are not adopted, the potential result would be to restrict aftermarket manufacturers from offering a full range of wheel and tire combinations to consumers, leaving such manufacturers with an unenviable choice between not selling these aftermarket products or accepting the associated product liability exposure.

In contrast, VW/Audi stated that the test procedures in the final rule should recognize that some malfunctions may require action on the part of the dealer in order to extinguish the TPMS MIL.

In the NPRM, the agency's rationale for its tentative conclusion that the proposal would not have a significant economic impact upon a substantial number of small entities was based upon several considerations. First, the agency understands that there are currently only four small motor vehicle manufacturers in the U.S. that would have to comply with the standard and that those manufacturers would rely on TPMS suppliers to provide the requisite system hardware to be integrated into their vehicles. There are a few small manufacturers of recreational vehicles, but the agency expressed its belief that most of these manufacturers could use the TPMSs supplied with the van chassis supplied by other large vehicle manufacturers and rely upon the chassis manufacturer's incomplete vehicle certification. We believe that the circumstances for these entities remain essentially unchanged.

In the NPRM, the agency also sought to eliminate the concerns of small businesses that make and sell custom wheels and aftermarket rims by proposing to exempt spare tires and aftermarket rims (that do not match the original equipment rims) from the requirements of the standard on a practicability basis.

For the following reasons, we continue to believe that the requirements of the standard, as contained in this final rule, will not have a significant economic impact upon a substantial number of small entities.

We do not believe that the final rule will have a significant impact upon the service industry in terms of aftermarket sales or repair. First, the agency has already stated that we do not consider installation of an aftermarket or replacement tire or rim that is not compatible with the TPMS to be a ''make inoperative'' situation under 49 U.S.C. 30122, provided that the business entity does not disable the TPMS MIL (*see* section IV.C.4(a)). In such situations, once the TPMS MIL illuminates, the consumer is put on notice that the aftermarket motor vehicle equipment in question is not compatible with the TPMS. From that point, it is within the consumer's power to substitute other tires or rims that permit continued proper TPMS functionality.

In addition, SEMA has not provided any evidence to demonstrate that vehicle manufacturers would not make necessary repair and servicing information available to the aftermarket

[52] Under 49 U.S.C. 30112(a), ''* * * a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction into interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter [49 U.S.C. 30101 *et seq.*] takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.''

[53] Under 49 U.S.C. 30122(b), ''A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter [49 U.S.C. 30101 *et seq.*] unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.''

sales industry and to the service industry. We have not received any consumer complaints regarding the serviceability of existing TPMSs. Vehicles currently include many complex systems, and, although dealer involvement may be necessitated in some cases, the marketplace has generally made available sufficient information to permit convenient maintenance and repair of such systems. We do not believe that TPMS technologies will prove any different in this regard. Accordingly, we believe that it is unnecessary to further consider SEMA's suggestion to compel vehicle manufacturers to share service information with the service and repair industry.

We note that we are permitting, but not requiring, TPMSs to be reprogrammable. Although we are uncertain as to the exact details of system reprogrammability, we assume that it will be fairly easy for the service industry to reprogram TPMSs to accommodate different tires and rims. We do not have any reason to believe that such information would be withheld from automotive service providers.

Regarding SEMA's suggestion that NHTSA require vehicle manufacturers to comply with SAE and EU standards governing the design of the wheel mounting pockets in order to facilitate transferal of sensors from the OE tires/wheels to replacement tires/wheels, we do not see a reason to impose such design restrictions on manufacturers.

In addition, we believe that there are other available options for replacement of TPMS sensors without imposing such design restrictions. As we understand, there are two primary methods of mounting a direct TPMS sensor on a rim. The first option is to produce a mold for the rim that includes a small cut-out area for the TPMS sensor. The other option is to utilize a strap to hold the sensor to the rim. If aftermarket manufacturers do not receive specific information on the cut-out area or if they wish to produce a more generic mold that could be used on any vehicle with the same size tires, they could choose to use a strap to secure the TPMS sensor. We estimate that four straps might cost approximately $4, which is not very expensive as compared to the cost for replacement rims, so we believe that aftermarket rim suppliers could readily apply the strap method without a significant economic impact.

9. Environmental Impacts

ETV commented that the final rule should include an expanded discussion of the rule's anticipated impacts on the environment. According to ETV, both positive and negative impacts would be expected to result from establishment of an FMVSS for TPMS. ETV stated that two important positive environmental benefits would be lower levels of air pollution and reduced tire disposal rates, both resulting from operating tires at their proper pressures. In its comments, ETV stated that correct tire pressure improves fuel economy, with less fuel burned and correspondingly less pollutants produced. Correct pressure also extends tire life, thereby decreasing tire disposal rates at waste depots.

On the negative side, ETV stated that a significant environmental impact may result from the use of batteries to power wheel module pressure sensors in many TPMSs. The following summarizes ETV's view of these purported negative environmental impacts. According to ETV, there are approximately 16 million new vehicle produced annually that ultimately will be required to be equipped with a TPMS under the standard. If each vehicle has five tires (including the spare) fitted with battery-powered sensors, then there will be approximately 80 million batteries introduced annually into the U.S. environment. Eventually, these batteries will lose their charge, and they (and the chemicals contained therein) will be discarded. ETV expressed concern that toxic and corrosive chemicals in those batteries could be released into the environment.

According to ETV, in developing the final rule, NHTSA should carefully consider the impacts of requiring systems that will use chemical power sources, particularly given the standard's broad applicability. Instead, ETV argued in favor of a requirement for a batteryless TPMS, which ETV believes is practical, safe and economically viable.

In the preamble to the NPRM, the agency certified that it has analyzed the TPMS rulemaking for the purposes of the National Environmental Policy Act (NEPA) and that the agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. Even after having considered ETV's comments regarding the environmental impacts of our proposal, for the reasons that follow, we stand by our tentative conclusion that this action would not have any significant impact on the quality of the human environment.

NHTSA has implemented the requirements of NEPA through our regulations at 49 CFR Part 520, *Procedures for Considering Environmental Impacts.* Our regulations require preparation of an environmental impact statement for ''major Federal actions significantly affecting the quality of the human environment.'' 49 CFR 520.5(a). The regulations also provide specific examples of situations that should ordinarily be considered as significantly affecting the quality of the human environment. The relevant situations that might apply to the present rulemaking include:

> (8) Any action that may directly or indirectly result in a significant increase in the energy or fuel necessary to operate a motor vehicle, including but not limited to the following: (i) Actions which may directly or indirectly result in a significant increase in the weight of a motor vehicle; and (ii) actions which may directly or indirectly result in a significant adverse effect upon the aerodynamic drag of a motor vehicle;
>
> (9) Any action that may directly or indirectly result in a significant increase in the amount of harmful emissions resulting from the operation of a motor vehicle;
>
> (10) Any action that may directly or indirectly result in a significant increase in either the use of or the exposure to toxic or hazardous materials in the manufacture, operation, or disposal of motor vehicles or motor vehicle equipment;
>
> (11) Any action that may directly or indirectly result in a significant increase in the problem of solid waste, as in the disposal of motor vehicles or motor vehicle equipment;

49 CFR 520.5(b)(8), (9), (10), and (11).

We believe that none of the purported impacts cited by ETV rise to the level of ''significantly affecting the quality of the human environment.'' According to ETV, a requirement for a TPMS would result in tires operating at proper pressures, thereby leading to lower levels of air pollution (through improved fuel economy) and reduced tire disposal rates (through increased tread life). As discussed in the FRIA, we believe that installation of a TPMS in light vehicles will result in an average savings of 22–27 gallons of gasoline over the life of the vehicle, depending upon the type installed. This equated to roughly two fill-ups, which would be expected to result in an average annual emissions reduction of 0.90–1.10 million metric cubic tons of carbon equivalent (*see* p. V–60 of the FRIA). While these benefits in terms of reduced emissions are welcome, they would not significantly change the overall level of emissions from automotive point sources. In addition, such positive impacts would not necessitate preparation of an environmental impact statement under our regulations pursuant to NEPA.

Regarding increased tread life, we believe that installation of a TPMS will result in average tire tread life being increased by 740–900 miles per tire, depending upon the type installed (*see* pp. V–61 to 67 of the FRIA). The average lifespan of tires, at current inflation levels, is 45,000 miles. Consequently, although installation of a TPMS may increase the life of tires, it is unlikely to significantly impact the number of tires required over the life of the fleet or the number of tires ultimately reaching their final resting place in a landfill. However, any increases in tire life would be positive impacts that would not necessitate preparation of an environmental impact statement under our regulations pursuant to NEPA.

Finally, we turn to the issue of the incorporation of chemical batteries in direct TPMSs that will eventually require disposal. NHTSA's current information suggests that most vehicle manufacturers will comply with the requirements of the TPMS standard by installing a direct TPMS that utilizes batteries in sensors mounted in each of the vehicle's wheels. If we expect, upon completion of the phase-in, 17 million light vehicles would be certified to the standard each year, that would mean that 68 million batteries would be used. If manufacturers choose to also equip full-size spare tires with a TPMS sensor (15 percent anticipated), the number of batteries used would rise to 71 million.

However, we do not believe that requiring TPMSs, which may be equipped with batteries, would have a significant impact on the quality of the human environment, as ETV suggests. To start, the number of batteries attributable to TPMSs would result in only a modest increase in the number of batteries sold. In 1998, the U.S. EPA estimated that approximately 3 billion [54] industrial and household batteries were sold.

NHTSA believes that battery usage is a function of population. Given that the population was roughly 270,248,000 [55] in 1998 and 293,028,000 [56] in 2004, to arrive at a more current estimate, we proportionately increased the batteries sold by multiplying the 1998 figure by the fractional increase in population or 3,000,000,000 x [293,028,000 270,248,000], which results in a 2004 estimate of 3.25 billion batteries.

Adding the estimate of 71 million additional batteries as a result of a battery-powered TPMS to the estimated 3.25 billion batteries already in use, yields an increase of 2.18 percent. We believe that this increase is not significant in terms of total battery use and will not have a significant impact upon the quality of the human environment.

In addition, we believe that other considerations further diminish these impacts. First, TPMS sensor batteries tend to be extremely small in size, a mere fraction of the size of the main engine battery present in every vehicle. Thus, from a volume standpoint, these batteries would be expected to add very little to existing landfills, either in terms of their volume or chemical content.

Furthermore, we believe that the number of batteries used in TPMSs is likely to decrease over time. We understand that new, batteryless TPMS technologies have been developed, and manufacturers will have strong incentives to migrate to such systems both in terms of decreasing costs and minimizing maintenance issues for customers. We also understand that indirect TPMSs are becoming available which can meet the requirements of the standard without the need for batteries. Furthermore, if hybrid systems are developed, the number of batteries for a given TPMS could be cut in half.

For these reasons, we continue to believe that the TPMS rulemaking will not have any significant impact on the quality of the human environment.

10. Maintenance Issues

(a) *TPMS Maintenance*. Aviation Upgrade Technologies commented that most consumers will not spend money to maintain the functionality of the TPMS, and it argued that because the system is unlikely to last the life of the vehicle without needing maintenance or repair, the safety benefits associated with the TPMS may be lost at some point. The commenter asserted that indirect TPMSs would need to be recalibrated each time tires are changed or rotated and that recalibration would cost the consumer $100 per episode.

This comment does not comport with our understanding of how indirect TPMSs operate, and Aviation Upgrade Technologies was alone in making this point. It is our understanding from our review of indirect TPMSs that recalibration is a normal part of the system's operations after tires are changed or rotated, although it may be necessary to reset the system in accordance with instructions in the vehicle's owners manual. Furthermore, Aviation Upgrade Technologies did not provide any evidence, beyond its assertion, to demonstrate that the consumer would encounter such recalibration costs, nor did it provide any evidence to demonstrate the consumers would not be willing to incur routine maintenance costs associated with their vehicle's TPMS. We encourage consumers to keep their TPMS properly maintained in order to receive ongoing benefits in terms of low tire pressure warnings.

(b) *Tire Maintenance*. In its comments, ETRTO expressed concern that installation of a TPMS in a vehicle may result in less preventive tire maintenance (*e.g.*, regular pressure and wear checks) because drivers may rely upon the TPMS to inform them when tire service is necessary. (Similar comments were provided by NADA and SEMA.) According to the commenters, such a result would be contrary to the agency's goals related to tire safety.

NADA argued that the NPRM did not adequately address the issue of whether TPMSs will necessitate tire installers/rotators to maintain existing rim positions and that it failed to analyze the nature and extent to which TPMS functions may be impacted when rims are replaced. NADA expressed concern that having to rotate tires off the rims could significantly increase the cost of tire rotations (which presumably could impact the regularity of rotations).

Under the TREAD Act, Congress directed the Secretary of Transportation to promulgate a regulation to require installation of TPMSs in new motor vehicles, a responsibility that was subsequently delegated to NHTSA. As a result, NHTSA does not have discretion vis-à-vis this TPMS mandate. However, NHTSA has stated many times that the TPMS is not a substitute for regular tire maintenance, and as part of this final rule, we have reiterated such a statement in the required owner's manual language.

Although the presence of a TPMS in the vehicle may cause some drivers to become more complacent and to check their tire pressure less regularly, we believe that this potential, negative consequence would be outweighed by the positive impact of having the system provide a warning to all drivers, particularly those who seldom or never checked their tire pressure.

Regarding NADA's comments on the potential consequences of allowing vehicle manufacturers to specify in the owner's manual that original rim positions must be maintained, we do not believe that this situation is likely to occur with significant frequency or that it would impose significant burdens when it does arise. For example, indirect TPMSs would not be expected to experience any problems associated with tire rotation.

[54] *See http://www.epa.gov/epaoswer/non-hw/reduce/epr/products/batteries.html.*

[55] *See http://www.census.gov/population/estimates/nation/intfile3–1.txt.*

[56] *See http://www.cia.gov/cia/publications/factbook/geos/us.html.*

Several types of direct TPMSs have radio frequency receivers that identify sensors by their location on the vehicle. If the location of a particular sensor is changed, the sensor still will provide low tire pressure or TPMS malfunction data as designed when there is a general TPMS warning telltale. However, if the vehicle is equipped with a TPMS telltale that identifies the vehicle location of the tire with low pressure, tire and rim relocation (*i.e.*, rotation) may result in the TPMS receiver not knowing the proper location of the tire/rim combination. However, for many systems, the sensors can be ''retrained'' to their new positions on the vehicle after being rotated, and the telltale will identify the proper tire/rim position. Therefore, the tires on most TPMSs will not need to be separated from the rim for normal tire rotation as a result of this retraining capability.

For these reasons, we have decided to adopt the proposed requirement for rim position under S5.3.3. Therefore, in conducting compliance testing, the vehicle rims may be positioned at any wheel position, consistent with any related instructions or limitations in the vehicle owner's manual.

11. Markings for Vehicles With Direct TPMSs

SEMA recommended that NHTSA require a means of identifying vehicles equipped with a direct TPMS, so that individuals working in the service and repair industry will be able to tell whether a direct TPMS sensor is in place in or around the tires. According to SEMA, its suggestion may prevent damage to the TPMS sensors when the tires are dismounted or mounted. SEMA stated that such marking should be implemented in a manner that does not impose unnecessary burdens and costs on the tire and wheel industry, such as through permanent markings that would require retooling or new molds. Instead, SEMA suggested that one low-cost option might be to require that vehicles equipped with a direct TPMS must have a unique, standardized valve stem retaining nut that is distinctive by special color or design.

In its comments, TIA made similar arguments regarding the need to require coding of the wheels or tires to let automotive professionals know that a direct TPMS sensor is in place. TIA expressed support for the recommended approach contained in SEMA's comments. TIA also stated that TPMS sensor location should be standardized.

We have decided not to adopt SEMA's and TIA's recommendations to require a specialized design feature to alert service and repair personnel when a direct TPMS sensor is in place in or around the tires, because we believe that such a requirement is unnecessary and would provide no safety benefit. The commenters did not provide any evidence to demonstrate that technicians have been unable to locate and service direct TPMSs currently installed on vehicles or that they would be unable to do so in the future. In contrast, we believe that as such systems become more prevalent in the vehicle fleet, service providers will become increasingly aware of the potential presence of TPMS sensors and will exercise due care when servicing the vehicle.

We are not adopting TIA's recommendation that we mandate a specific location for TPMS sensors. We believe that such an approach would be unnecessarily design restrictive, could increase costs, and would provide no appreciable benefit.

12. Definitions

(a) *''Tires''*. Sumitomo commented that although the NPRM expressed the agency's intention to require vehicle manufacturers to assure compliance with FMVSS No. 138 only with the tires installed on the vehicle at the time of initial vehicle sale, there is no corresponding provision in the regulatory text of the standard. To address this matter, Sumitomo recommended that the final rule should incorporate this limitation under S1, *Purpose and Scope*, and also define the term ''tires'' as ''the tires installed on the vehicle at the time of initial sale'' under S3, *Definitions*.

Consistent with the preamble of the NPRM, this final rule provides that the TPMS must function properly with the tires installed on the vehicle at the time of initial sale, and that the TPMS is not required to function with the spare tire. We agree with Sumitomo that these topics should be addressed in the regulatory text. Therefore, we are adding a new paragraph to S5.3, *Vehicle Conditions*, related to tires. In that new paragraph, S5.3.7, *Tires*, we are clarifying that testing under S6 will be conducted with the tires installed at the time of initial vehicle sale, excluding the spare tire (if provided). However, a spare tire could be installed for TPMS malfunction testing purposes.

(b) *''Manual Reset''*. Sumitomo asked the agency to define the term ''manual reset'' as ''an operation to extinguish the warning lamp or warning messages.'' According to Sumitomo, manual reset should not include the start of calibration.

We do not believe that it is necessary to define the operation of a manual reset feature. In the final rule, we recognize that manual reset, where applicable, may be relevant to system calibration and extinguishment of the low tire pressure telltale, but we will leave the details of the operation of reset for individual systems to the discretion of vehicle manufacturers.

13. Educational Efforts

A number of commenters (AAA, DaimlerChrysler, EnTire, VW/Audi) raised the issue of consumer education regarding the importance of proper tire maintenance and the role of the TPMS. For example, AAA recommended that NHTSA, manufacturers, and the traffic safety community must continue to aggressively educate motorists as to the importance of proper tire maintenance, in order to ensure that the presence of a TPMS does not lull motorists into a false sense of security.

DaimlerChrysler commented that it is important for NHTSA, automobile manufacturers, and tire manufacturers to work together to educate the public about how TPMSs work and about such systems' limitations. DaimlerChrysler requested that the agency help improve consumer understanding of the importance of regular tire inspections and maintenance, and it suggested that NHTSA may be able to work with the vehicle supply and maintenance industries to improve the availability and convenience of facilities for checking and correcting tire inflation pressure levels.

NADA stated that outreach efforts should be extended to tire installers as well.

As noted in the NPRM, NHTSA supports industry efforts to make the public aware of the importance of proper tire maintenance, including maintaining adequate tire inflation pressure. The agency has produced a tire safety brochure in conjunction with tire manufacturers and tire dealers that is titled, ''Tire Safety, Everything Rides On It.'' This brochure is part of a public campaign to provide information on tire pressure monitoring, tire inspection, and the selection of replacement tires. The brochure also stresses the importance of tires to overall vehicle performance.

14. Alternative Systems

Aviation Upgrade Technologies requested that NHTSA reconsider its tentative decision not to permit TPMS systems with indicators on a vehicle's tire valve stems. The NPRM declined to accommodate such systems because they cannot provide a low pressure warning to the driver while the vehicle is in motion.

Aviation Upgrade Technologies argued that its valve cap system meets the letter and intent of the TREAD Act and actually outperforms other types of TPMSs by measuring actual tire pressure and functions before the vehicle begins moving. Aviation Upgrade Technologies also stated that as proposed, the TPMS standard would only benefit the wealthy, because the TPMSs that can meet the proposed requirements are expensive. The company's comments essentially repeat its earlier arguments raised in its petition for reconsideration of the June 2002 final rule for TPMS.

For the reasons expressed in the NPRM, we have decided not to permit TPMS systems with indicators on a vehicle's tire valve stems. We will briefly restate our reasoning, which is as follows. First, we believe that the language of and the safety need addressed by section 13 of the TREAD Act would be best satisfied by requiring that the TPMS warning display be inside the motor vehicle in order to indicate to the driver when a tire is significantly under-inflated. We believe that external TPMS warning indicators do not provide a clear, timely, and effective safety warning, as compared to TPMS indicators in the vehicle's occupant compartment.

Specifically, TPMSs with external indicators cannot provide a warning to the driver about low tire inflation pressure with the vehicle is in operation, which is the most critical time period from a safety perspective. If a vehicle developed a significant pressure loss while it is being driven, the driver would not receive a prompt warning from a valve stem system and is unlikely to be aware of the under-inflation problem.

Even in cases in which the vehicle is stopped, we believe that external TPMS warning indicators would not provide as effective a warning as a TPMS telltale inside the occupant compartment. People routinely do not walk around their vehicle prior to driving, so it is likely that many drivers would miss the message provided when there is an under-inflated tire. Therefore, we believe that valve cap devices would not provide an adequate warning to the driver.

Second, NHTSA also finds benefit to the centralization of warning indicators in a single, highly visible location, where they can provide important safety-related information to the driver. Historically, NHTSA has required safety warnings to be provided to the vehicle operator inside the vehicle.

Therefore, we have decided not to accommodate TPMSs that do not include an on-board telltale as part of the final rule.

15. Over-Inflation Detection

ETV commented that, although requiring the TPMS to monitor high pressure is as important as monitoring low pressure, the NPRM did not consider or address this issue. ETV stated that manufacturers specify a safe maximum tire pressure, and that the final rule should address this aspect of vehicle safety. ETV's comments recommended an intermittently flashing yellow telltale warning when the vehicle's tires are within five percent of their maximum inflation pressure and an intermittently flashing red telltale when the vehicle's tires have exceeded the maximum inflation pressure.

We have decided not to adopt a requirement for over-inflation detection for the following reasons. First, the TREAD required a rulemaking to detect a significantly under-inflated tire, not over-inflated tires, so such a requirement is arguably outside the scope of this rulemaking. Furthermore, we are not aware of vehicle safety data reporting over-inflated tires as a significant safety hazard. In addition, available information does not suggest that over-inflation has the same safety implications as under-inflation, which causes heat buildup in a tire, potentially leading to permanent tire damage and sudden failure.

16. Temperature and Altitude Compensation

ETV requested that the agency reconsider its tentative decision in the NPRM to not include a requirement for temperature compensation as part of the TPMS standard. ETV argued that the standard must provide temperature compensation when the TPMS calculates tire pressure in order to determine the need for activation of the low pressure warning. According to ETV, temperature compensation is needed to account for the rise in pressure (4 psi) from the cold-start, ambient temperature to the normal running temperature.

ETV also stated that the TPMS should be required to account for changes in atmospheric pressure that accompany changing altitudes. ETV commented that such atmospheric pressure changes could change tire pressure by as much as 10 psi.

ETV argued that the TPMS should make the necessary adjustments to account for temperature, altitude, and load prior to vehicle motion in order to prevent nuisance warnings that may result from daily and seasonal variations in those factors and which eventually might cause the driver to ignore TPMS warnings. Alternatively, ETV argued that those factors could cause the TPMS low pressure telltale to fail to illuminate, thereby resulting in a false sense of security on the part of the driver.

We have decided not to adopt requirements for temperature and altitude compensation because we believe that such requirements would introduce unnecessary complexity to the standard. Regarding temperature correction, the test procedures for low tire pressure detection in the final rule have been amended to compensate for tire pressure fluctuation. Tires will be deflated to testing pressure within five minutes after a 20-minute period of driving, which will ensure that the tire pressure will not rise above the telltale activation pressure during the remainder of the test.

Regarding altitude correction, we do not believe that altitude will be a significant factor in tire pressure fluctuation. We expect that the effect of atmospheric pressure on tire pressure will not result in more than a 5-percent change in tire pressure over the atmospheric pressure extremes encountered during normal driving.

We note further that ETV did not provide any data to demonstrate the need for either temperature or atmospheric compensation.

17. System Longevity

ETV commented that the TPMS safety system should be required to last for the life of the vehicle, which ETV stated is usually about ten years. ETV's comments expressed particular skepticism toward battery-dependent TPMSs, which it suggests are likely to fail in under ten years, and it argued that consumers may decide not to replace the batteries or otherwise repair the system late in the life of the vehicle. ETV argued that operation of the vehicle in that state would frustrate the purpose of the rule.

We are not adopting ETV's suggestion for what amounts to a longevity requirement for the vehicle's TPMS, because we believe that such a requirement is both impracticable and unnecessary. Vehicle systems and components routinely wear out over the life of a vehicle, although the frequency may vary. For example, drivers may need to replace their wiper blades several times over the life of the vehicle, to replace their timing belt once, but perhaps never need to replace their transmission. It is simply not reasonable to expect vehicle manufacturers to certify that a system, such as the TPMS, will function for the life of the vehicle.

Instead, we believe that consumer expectations and market competition will ensure that manufacturers provide TPMSs that are reasonably robust.

Furthermore, ETV has provided no evidence to demonstrate that consumers would not take the necessary steps to keep their TPMS functioning (even for systems with battery-powered sensors) or that the service industry would be unable to provide adequate TPMS repair.

18. Harmonization

The EC commented that the United Nations (UN) World Forum on Harmonization of Motor Vehicle Regulations has begun a global technical regulation (GTR) on tires. Accordingly, the EC requested that the United States adapt TPMS requirements in the future to reflect the work of this international body.

NHTSA will follow closely international efforts related to tires and TPMSs, including the activities of the UN World Forum on Harmonization of Motor Vehicle Regulations. To the extent that a GTR or a consensus standard related to TPMS becomes available, the agency will carefully consider what actions, if any, are necessary to amend FMVSS No. 138.

V. Benefits

In preparing its June 5, 2002 final rule, NHTSA prepared a Final Economic Analysis (FEA), which was placed in the docket.[57] In that document, we discussed the costs and benefits of both the four-tire, 25-percent option and the one-tire, 30-percent option incorporated in that final rule. However, in *Public Citizen, Inc.* v. *Mineta,* the Second Circuit determined that the TREAD Act requires TPMSs to be four-tire systems and invalidated the one-tire, 30-percent option. Accordingly, that option has not been included in this final rule.

Although the FEA included analyses related to TPMSs with a four-tire, 25-percent under-inflation detection capability (the same performance standard required in this final rule), circumstances have changed to a certain extent since the June 2002 final rule. New technologies are emerging (*e.g.*, batteryless direct TPMSs that could greatly reduce maintenance costs for such systems), and new requirements have been adopted (*e.g.*, requirement for a TPMS malfunction indicator). Accordingly, the agency has prepared a new Final Regulatory Impact Analysis to accompany this final rule for tire pressure monitoring systems. The FRIA has been submitted to the Docket under the docket number for this notice.

The purpose of the FRIA is to reassess the costs and benefits of TPMS requirements, particularly in light of our resolution of the replacement tire issue and the requirement for a TPMS malfunction indicator. (The FRIA states that incorporation of a TPMS malfunction indicator may save an additional two equivalent lives, assuming a one-percent malfunction rate for replacement tires.) In addition, the FRIA examines various technologies suitable for compliance with the standard, as well as additional regulatory alternatives considered by the agency. It also discusses the uncertainties analyses and sensitivities analyses conducted by the agency as part of the FRIA, as required by OMB Circular A–4, *Regulatory Analysis,* which was issued in September 2003.

The following discussion summarizes the benefits associated with this final rule and its four-tire, 25-percent under-inflation detection requirement. Estimates of monetary impact (both in the section V. Benefits and section VI. Costs) are presented using a 3-percent discount rate; however, the FRIA also presents these impacts using a 7-percent discount rate.

The agency notes that the FRIA estimates 90-percent confidence bounds for many of the benefit and cost statistics. Those bounds reflect a 90-percent certainty level that the value is within that range (both for a 3-percent and a 7-percent discount rate). However, to simplify the discussion here, we are presenting the mean values for the benefit estimates in this section and the cost estimates in the next section, with the ranges below reflecting differences in the mean values based upon manufacturers' technology selection. The mean values are our best estimates. Please consult the FRIA for a more complete discussion of benefits and costs. The full ranges of benefits and costs, as well as their 90-percent confidence bounds, can be found in the FRIA's uncertainty analysis (Chapter X).

Under-inflation of tires affects the likelihood of many different types of crashes. These include crashes which result from: (1) Skidding and/or losing control of the vehicle in a curve, such as a highway off-ramp, or in a lane-change maneuver; (2) hydroplaning on a wet surface, which can cause increases in stopping distance and skidding or loss of control; (3) increases in stopping distance; (4) flat tires and blowouts, and (5) overloading the vehicle. In assessing the impact of this final rule on those crashes, the agency assumes that 90 percent of drivers will respond to a low tire pressure warning by re-inflating their tires to the recommended placard pressure.

Based upon this assumption and depending upon the specific technology chosen for compliance, the agency estimates that the total quantified safety benefits from reductions in crashes due to skidding/loss of control, stopping distance, and flat tires and blowouts will be 119–121 fatalities prevented and 8,373–8,568 injuries prevented or reduced in severity each year, if all light vehicles meet the TPMS requirement.

Further, NHTSA anticipates additional economic benefits from the standard due to improved fuel economy, longer tread life, property damage savings, and travel delay savings. Correct tire pressure improves a vehicle's fuel economy. Based upon data provided by Goodyear, we have determined that a vehicle's fuel efficiency is reduced by one percent for every 2.96 psi that its tires are below the placard pressure. The agency estimates that if all light vehicles meet the TPMS requirement, vehicles' higher fuel economy would translate into an average discounted value of $19.07–$23.08 per vehicle over the lifetime of the vehicle, depending upon the specific technology chosen for compliance.

Correct tire pressure also increases a tire's tread life. Data from Goodyear indicate that, for every 1-psi drop in tire pressure, tread life decreases by 1.78 percent. NHTSA estimates that if all light vehicles meet the four-tire, 25-percent compliance requirement, average tread life would increase by 740 to 900 miles. The agency estimates that the average discounted value of resulting delays in new tire purchases would be $3.42–$4.24 per vehicle, depending upon the specific technology chosen for compliance.

To the extent that TPMSs provide improvements related to stopping distance, blowouts, and loss of control in skidding, we expect that some crashes would be prevented and that in others, the severity of the impacts and the injuries that result would be reduced. As a related matter, we expect that property damage and travel delays would also be mitigated by these improvements. To the extent that crashes are avoided, both property damage and travel delay would be completely eliminated. Crashes that still occur, but do so at less serious impact speeds, would still cause property damage and delay other motorists, but to a lesser extent than they otherwise would have. The value of property damage and travel delay savings is

[57] Docket No. NHTSA–2000–8572–216.

estimated to be from $7.70–$7.79 per vehicle.

VI. Costs

The FRIA also contains an in-depth analysis of the costs associated with the TPMS standard. It analyzes the cost of different TPMS technologies, overall vehicle costs, maintenance costs, testing costs, and opportunity costs. The FRIA also analyzes the cost impact of the requirement for a TPMS malfunction warning and its effectiveness in resolving the replacement tire issue.[58] Again, please consult the FRIA for a more complete discussion of costs.[59] The following points summarize the key determinations related to costs.

The agency examined three types of technology that manufacturers could use to meet the TPMS requirements. Assuming that manufacturers will seek to minimize compliance costs, the agency expects that manufacturers would install hybrid TPMSs on the 67 percent of vehicles that are currently equipped with an ABS and direct TPMSs on the 33 percent of vehicles that are not so equipped. The highest costs for compliance would result if a manufacturer installed direct TPMSs with an interactive readout of individual tire pressures that included sensors on all vehicle wheels.

In the near term, the agency believes that a direct system with a generic warning lamp (Option 2) is the most likely option to be selected by automobile manufacturers. To date, no one has produced a hybrid system (Option 3) and responses to requests for information from the manufacturers resulted in most indicating that they were planning on using direct systems. Individual tire pressure displays (Option 1) are more costly than a warning light and are not required by the final rule, but some manufacturers may choose them for their higher priced models. In the long run, the agency suspects that price pressure and further development of tire pressure monitoring systems could result in hybrid or indirect systems meeting the final rule and being introduced.

Thus, the agency estimates that the average incremental cost for all vehicles to meet the standard's requirements would range from $48.44–$69.89 per vehicle, depending upon the specific technology chosen for compliance. Since approximately 17 million vehicles are produced for sale in the U.S. each year, the total annual vehicle cost is expected to range from approximately $823–$1,188 million per year.

The agency estimates that the net cost per vehicle [vehicle cost + maintenance costs + opportunity costs—(fuel savings + tread life savings + property damage and travel delay savings)] would be $26.63–$100.25, assuming a one-percent TPMS malfunction rate for replacement tires. (Maintenance costs would be variable, depending upon whether the TPMS has batteries or is batteryless.) As noted above, the agency estimates the total annual vehicle cost for the fleet would be about $823–$1,188 million. Thus, using the same equation, the agency estimates the total annual net cost would be about $453–$1,704 million.

NHTSA estimates that the net cost per equivalent life saved would be approximately $2.3–$8.5 million, depending upon the specific technology chosen for compliance. Placing 90-percent confidence bounds around the cost per equivalent life saved results in a range of $1.5–$14.5 million.

Net benefits-costs (*i.e.*, benefits, including fatalities and injuries, valued in dollars minus costs) were also calculated per OMB Circular A–4. The value of a statistical life is uncertain, and a wide range of values has been established in the literature. (In general, the statistical value of a life is valued in the range of $1 million to $10 million per life, with a midpoint of $5.5 million.) For this analysis, we have examined values of $3.5 million and $5.5 million, both of which fall within the range of accepted values. The mean value for net benefits-costs ranges of the TPMS standard from a net cost of $597 million to a net benefit of $655 million, depending upon the specific technology chosen for compliance. A 90-percent confidence bound around the net benefits-costs results in a range from a net cost of $1,156 million to a net benefit of $1,302 million.

VII. Regulatory Alternatives

The performance requirements specified in this final rule contain two key variables: (1) The number of tires monitored and (2) the threshold level for providing tire pressure warnings. As noted elsewhere in this preamble, the Second Circuit determined in *Public Citizen, Inc.* v. *Mineta* that the TREAD Act unambiguously mandates TPMSs capable of monitoring each tire up to a total of four tires, effectively precluding any option with less than a four-tire detection capability. Further, the Court found that the agency had justification for adopting a four-tire, 25-percent option instead of the four-tire, 20-percent option proposed at an earlier stage of the rulemaking.

Although NHTSA is requiring a 25 percent below placard threshold for under-inflation detection, technically, other threshold levels could also be established. Selecting an appropriate notification threshold level is a matter of balancing the safety benefits achieved by alerting consumers to low tire pressure against over-alerting them to the point of becoming a nuisance and causing consumers to ignore the warning, thus negating the potential of the standard to produce safety benefits. Degradation in vehicle braking and handling performance does not become a significant safety issue at small pressure losses. There does not appear to be a specific threshold level at which benefits are maximized by a combination of minimum reduction in placard pressure and maximum response by drivers. NHTSA is confident that existing technology can meet the 25 percent threshold.

Setting a lower threshold might have resulted in the opportunity for more savings if drivers' response levels were maintained; however, we are concerned that setting a lower threshold could result in a higher rate of non-response by drivers who regard the more frequent notifications as a nuisance. Current direct TPMS systems have a margin of error of 1–2 psi. That means, for example, that for a 30-psi tire, manufacturers would have to set the system to provide a warning when tires are 4 psi below placard if we had decided to require a 20 percent threshold. We have concluded that this may be approaching a level at which a portion of the driving public would begin to regard the warning as a nuisance. We have not examined lower threshold levels in this analysis because we believe that the net impact of these offsetting factors (quicker notification, but lower frequency of driver response) is unknown and unlikely to produce a significant difference in safety benefits. We note that a four-tire, 20-percent option was examined in our March 2002 analysis, and that the total benefit for the 20 percent threshold was about 15 percent higher than from the 25 percent threshold. However, that calculation assumed the same level of driver response for both thresholds. It is also possible that lower thresholds might

[58] As noted in the discussion of benefits in the section immediately above, the following discussion of costs estimates monetary impacts using a 3-percent discount rate and provides the mean values for cost statistics based upon manufacturers' technology selection. The mean values are our best estimates. However, the FRIA provides a full range of costs, as well as their 90-percent confidence bounds, and it also presents these impacts using a 7-percent discount rate.

[59] With future technological development, it may become possible for indirect TPMSs and other types of systems to meet the four-tire, 25-percent requirement. However, until such new, compliant TPMSs are developed, it is impossible to accurately estimate their costs.

limit technology and discourage innovation.

Overall, we have concluded that the 25 percent threshold adequately captures the circumstances at which low tire pressure becomes a safety issue. We also believe that this level would be acceptable to most drivers and would not be considered a nuisance to the point that it would be ignored by large numbers of drivers. We also believe there is no reason to examine higher thresholds (*e.g.*, a 30 percent threshold), since they would provide fewer benefits for similar costs.

VIII. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[60] These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.[61] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[62] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[63] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[64]

As noted previously, section 13 of the TREAD Act mandated a regulation to require a tire pressure monitoring system in new vehicles. In developing this final rule for TPMS, the agency carefully considered the statutory requirements of both the TREAD Act and 49 U.S.C. Chapter 301.

First, this proposal is preceded by an initial NPRM, a final rule, and a second NPRM, all of which facilitated the efforts of the agency to obtain and consider relevant motor vehicle safety information, as well as public comments. Further, in preparing this document, the agency carefully evaluated available research, testing results, and other information related to various TPMS technologies. We have also updated our cost and benefit analyses to account for new technologies emerging since issuance of our prior notices in the ongoing TPMS rulemaking (*e.g.*, batteryless direct TPMSs). In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the TPMS requirements are practicable, the agency considered the cost, availability, and suitability of various TPMSs, consistent with our safety objectives and the requirements of the TREAD Act. We note that TPMSs are already installed on many light vehicles, so we believe that it will be practicable to extend a TPMS requirement to all light vehicles. In light of the steady advances made in TPMS technologies over the past few years, we expect that vehicle manufacturers soon will have a number of technological choices available for meeting the requirements of the final rule for TPMS. In sum, we believe that this final rule is practicable and will provide several benefits, including prevention of deaths and injuries associated with significantly under-inflated tires, increased tread life, fuel economy savings, and savings associated with avoidance of property damage and travel delays (*i.e.*, from crashes prevented by the TPMS).

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, the final rule sets forth performance requirements for operation of the TPMS, both in terms of detecting and providing warnings related to low tire pressure and system malfunction.

The final rule also includes test requirements for TPMS calibration, low tire pressure detection, and TPMS malfunction. This test involves driving the vehicle under a defined set of test conditions (*e.g.*, ambient temperature, road test surface, test weight, vehicle speed, rim position, brake pedal application) on a designated road course in San Angelo, Texas. The test course has been used for several years by NHTSA and the tire industry for uniform tire quality grading testing. The standard's test procedures carefully delineate how testing will be conducted. Thus, the agency believes that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of the TPMS standard.

Fourth, we believe that this final rule will meet the need for motor vehicle safety because the TPMS standard will provide a warning to the driver when one or more tires become significantly under-inflated, thereby permitting the driver to take corrective action in a timely fashion and potentially averting crash-related injuries. Furthermore, by including a requirement for a TPMS malfunction indicator, we expect that the TPMS will be able to continue to provide low tire pressure warnings even after the vehicle's original tires are replaced. The TPMS malfunction indicator will also alert the consumer as to when the system is unavailable to detect low tire pressure and is potentially in need of repair.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the agency is addressing Congress' concern that significantly under-inflated tires could lead to tire failures resulting in fatalities and serious injuries. Under the TREAD Act, Congress mandated installation of a system in new vehicles to alert the driver when a tire is significantly under-inflated, and NHTSA has determined that TPMSs meeting the requirements of this final rule offer an effective countermeasure in these situations. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 138 because it furthers the agency's objective of preventing deaths and serious injuries associated with significantly under-inflated tires.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

[60] 49 U.S.C. 30111(a).

[61] 49 U.S.C. 30102(a)(9).

[62] 49 U.S.C. 30111(b).

[63] *Id.*

[64] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Since the June 5, 2002 final rule, to which this final rule is directly related, was determined to be economically significant, the agency prepared and placed in the docket a Final Economic Analysis. This final rule likewise was determined to be economically significant. As a significant notice, it was reviewed under Executive Order 12866. The rule is also significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that compliance with this final rule will cost $823–$1,188 million per year, since approximately 17 million vehicles are produced for the United States market each year. Thus, this rule would have greater than a $100 million effect.

As noted above, this final rule was necessitated by the August 6, 2003 opinion of the Court of Appeals for the Second Circuit in *Public Citizen, Inc.* v. *Mineta.* In that case, the court determined that the TREAD Act requires TPMSs to be four-tire systems, invalidated the one-tire, 30-percent option contained in the June 5, 2002 final rule, and vacated the standard. As part of the final rule, NHTSA also has responded substantively to public comments in response to the September 16, 2004 NPRM. Accordingly, the agency has prepared and placed in the docket a Final Regulatory Impact Analysis for this final rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that currently there are only four small motor vehicle manufacturers (*i.e.,* only four with fewer than 1,000 employees) in the United States that will have to comply with this final rule. These manufacturers are expected to rely on suppliers to provide the TPMS hardware, and then they would integrate the TPMS into their vehicles.

There are a few small manufacturers of recreational vehicles that will have to comply with this final rule. However, most of these manufacturers use van chassis supplied by the larger manufacturers (*e.g.,* GM, Ford, or DaimlerChrysler) and could use the TPMSs supplied with the chassis. These manufacturers should not have to test the TPMS for compliance with this final rule since they should be able to rely upon the chassis manufacturer's incomplete vehicle documentation.

Under the June 5, 2002 final rule, commenters expressed concerns about the impact upon aftermarket wheel and rim manufacturers, many of which are small businesses. These manufacturers were concerned that certain provisions of that final rule would have had the effect of restricting their ability to provide a full range of wheel and tire combinations to consumers, thereby negatively impacting their business. However, we believe that these concerns have largely been resolved by the final rule, which does not contain requirements for spare tires and aftermarket rims.

We likewise do not believe that the final rule will have a significant impact upon small businesses within the automotive service industry, either for aftermarket sales or repair. As previously discussed, the agency does not consider installation of an aftermarket or replacement tire or rim that is not compatible with the TPMS to be a ''make inoperative'' situation under 49 U.S.C. 30122, provided that the entity does not disable the TPMS malfunction indicator. As with other vehicle systems, we expect that vehicle manufacturers will make available sufficient information to permit routine maintenance and repair of such systems. We note also that we are permitting TPMSs to be reprogrammable, which we expect would further accommodate installation of different tires and rims. In addition, we believe that there are other low-cost options for maintenance and repair of TPMS sensors, such as strap mounting direct TPMS sensors to the vehicle's rims. For all these reasons, we believe that the final rule will not result in a significant economic impact upon aftermarket sellers of tires and rims or the vehicle service industry. (For further discussion related to these entities, see section IV.C.8 of this notice.)

We also analyzed the impact of this proposal on 14 identified suppliers of TPMS systems. However, of these companies, only three have fewer than 750 employees. Of these three companies, one (SmarTire) has its headquarters located outside of the United States, and another (Cycloid) has only ten employees and outsources the manufacturing of its products.

In conclusion, the agency believes that this final rule will not have a significant economic impact upon a substantial number of small businesses.

D. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the regulation.

Although statutorily mandated, this final rule for TPMS was analyzed in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that

the rule would not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This final rule is not expected to have any substantial effects on the States, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although the TPMS final rule has been determined to be an economically significant regulatory action under Executive Order 12866, the problems associated with under-inflated tires equally impact all persons riding in a vehicle, regardless of age. Consequently, this final rule does not involve decisions based upon health and safety risks that disproportionately affect children, as would necessitate further analysis under Executive Order 13045.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. As part of this final rule, each of the estimated 21 affected vehicle manufacturers is required to provide one phase-in report for each of two years, beginning in the fall of 2006.

Pursuant to the June 5, 2002 TPMS final rule, the OMB has approved the collection of information ''Phase-In Production Reporting Requirements for Tire Pressure Monitoring Systems,'' assigning it Control No. 2127–0631 (expires 6/30/06). NHTSA has been given OMB clearance to collect a total of 42 hours a year (2 hours per respondent) for the TPMS phase-in reporting. At an appropriate point, NHTSA may ask OMB for an extension of this clearance for an additional period of time.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

There are no voluntary consensus standards related to TPMS available at this time. However, NHTSA will consider any such standards as they become available.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, or more than $112 million annually, but it is expected to result in an expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In the June 5, 2002 final rule, the precursor to the current final rule, the agency chose two compliance options (*i.e.,* four-tire, 25-percent and one-tire, 30-percent) in order to minimize compliance costs with the standard during the phase-in period.

However, the Second Circuit in *Public Citizen, Inc.* v. *Mineta* struck down the one-tire, 30-percent option. Thus, in this final rule, NHTSA is adopting a four-tire, 25-percent requirement, which we believe is consistent with safety and the mandate in the TREAD Act. We note that in promulgating a performance standard, NHTSA has left the door open for an array of technologies that may be used to meet the standard's requirements. With further TPMS development, we expect that vehicle manufacturers will have a number of technological choices that will provide broad flexibility to minimize their costs of compliance with the standard.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment. (*See* section IV.C.9 of this notice for further discussion of the environmental impacts of this final rule, in response to a related public comment.)

K. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Parts 571 and 585

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.101 is amended by revising paragraph S5.2.3 and Table 2 to read as follows:

§ 571.101 Standard No. 101; Controls and displays.

* * * * *

S5.2.3 Except for the Low Tire Pressure Telltale, any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. The Low Tire Pressure Telltale (either the display identifying which tire has low pressure or the display which does not identify which tire has low pressure) shall be identified by the appropriate symbol designated in column 4, or both the symbol in column 4 and the words in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

* * * * *

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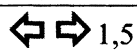
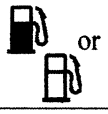
Table 2
Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	*Telltale Color*	*Identifying Words or Abbreviation*	*Identifying Symbol*	*Illumination*
Turn Signal Telltale	Green	Also See FMVSS 108	 1,5	———
Hazard Warning Telltale		Also See FMVSS 108	 2,5	———
Seat Belt Telltale	———4	Fasten Belts or Fasten Seat Belts Also See FMVSS 208	 or	———
Fuel Level Telltale		Fuel	 or	———
Gauge	———			Yes
Oil Pressure Telltale		Oil		———
Gauge	———			Yes
Coolant Temperature Telltale		Temp		———
Gauge	———			Yes
Electrical Charge Telltale		Volts, Charge or Amp		———
Gauge	———			Yes
Highbeam Telltale	Blue or Green 3	Also See FMVSS 108	5	———
Brake System 8	Red 3	Brake, Also see FMVSS 105 and 135	———	———

1. The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
2. Not required when arrows of turn signal telltales that otherwise operate independently flash simultaneously as hazard warning telltale.
3. Red can be red-orange. Blue can be blue-green.
4. The color of the telltale required by S4.5.3.3 of Standard No. 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
5. Framed areas may be filled.
8. In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

Table 2 (continued)

Column 1 *Display*	Column 2 *Telltale Color*	Column 3 *Identifying Words or Abbreviation*	Column 4 *Identifying Symbol*	Column 5 *Illumination*
Malfunction in Anti-lock or	Yellow	Antilock, Anti-lock or ABS. Also see FMVSS 105 and 135	———	———
Variable Brake Proportioning System 8	Yellow	Brake Proportioning, Also see FMVSS 135	———	———
Parking Brake Applied 8	Red 3	Park or Parking Brake, Also see FMVSS 105 and 135	———	———
Malfunction in Anti-lock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121	———	———
Brake Air Pressure Position Telltale	———	Brake Air, Also see FMVSS 121	———	———
Speedometer	———	MPH, or MPH and km/h 7	———	Yes
Odometer	———	——— 6	———	———
Automatic Gear Position	———	Also see FMVSS 102	———	Yes
Low Tire Pressure Telltale (that does not identify which tire has low pressure)	Yellow	Low Tire. Also see FMVSS 138		———
Low Tire Pressure Telltale (that identifies which tire has low pressure)	Yellow	Low Tire. Also see FMVSS 138		———
Tire Pressure Monitoring System Malfunction Telltale 9	Yellow	TPMS	———	———

3. Red can be red-orange. Blue can be blue-green.
6. If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
7. If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
8. In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.
9. Alternatively, either Low T ire Pressure Telltale may be used to indicate a TPMS malfunction. See FMVSS No. 138.

■ 3. Section 571.138 is added to read as follows:

§ 571.138 Standard No. 138; Tire pressure monitoring systems.

S1 *Purpose and scope.* This standard specifies performance requirements for tire pressure monitoring systems (TPMSs) to warn drivers of significant under-inflation of tires and the resulting safety problems.

S2 *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, according to the phase-in schedule specified in S7 of this standard.

S3 *Definitions.* The following definitions apply to this standard:

Lightly loaded vehicle weight means unloaded vehicle weight plus the weight of a mass of 180 kg (396 pounds), including test driver and instrumentation.

Tire pressure monitoring system means a system that detects when one or more of a vehicle's tires is significantly under-inflated and illuminates a low tire pressure warning telltale.

Vehicle Placard and *Tire inflation pressure label* mean the sources of information for the vehicle manufacturer's recommended cold tire inflation pressure pursuant to § 571.110 of this Part.

S4 *Requirements.*

S4.1 *General.* To the extent provided in S7, each vehicle must be equipped with a tire pressure monitoring system that meets the requirements specified in S4 under the test conditions specified in S5 and the test procedures specified in S6 of this standard.

S4.2 *TPMS detection requirements.* The tire pressure monitoring system must:

(a) Illuminate a low tire pressure warning telltale not more than 20 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of this standard for the corresponding type of tire, whichever is higher;

(b) Continue to illuminate the low tire pressure warning telltale as long as the pressure in any of the vehicle's tires is equal to or less than the pressure specified in S4.2(a), and the ignition locking system is in the ''On'' (''Run'') position, whether or not the engine is running, or until manually reset in accordance with the vehicle manufacturer's instructions.

S4.3 *Low tire pressure warning telltale.*

S4.3.1 Each tire pressure monitoring system must include a low tire pressure warning telltale that:

(a) Is mounted inside the occupant compartment in front of and in clear view of the driver;

(b) Is identified by one of the symbols shown for the ''Low Tire Pressure Telltale'' in Table 2 of Standard No. 101 (49 CFR 571.101); and

(c) Is illuminated under the conditions specified in S4.2.

S4.3.2 In the case of a telltale that identifies which tire(s) is (are) under-inflated, each tire in the symbol for that telltale must illuminate when the tire it represents is under-inflated to the extent specified in S4.2.

S4.3.3 (a) Except as provided in paragraph (b) of this section, each low tire pressure warning telltale must illuminate as a check of lamp function either when the ignition locking system is activated to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

(b) The low tire pressure warning telltale need not illuminate when a starter interlock is in operation.

S4.4 *TPMS malfunction.*

(a) The vehicle shall be equipped with a tire pressure monitoring system that includes a telltale that provides a warning to the driver not more than 20 minutes after the occurrence of a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system. The vehicle's TPMS malfunction indicator shall meet the requirements of either S4.4(b) or S4.4(c).

(b) *Dedicated TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a dedicated TPMS malfunction telltale that:

(1) Is mounted inside the occupant compartment in front of and in clear view of the driver;

(2) Is identified by the word ''TPMS'', as described under ''TPMS Malfunction Telltale'' in Table 2 of Standard No. 101 (49 CFR 571.101);

(3) Continues to illuminate the TPMS malfunction telltale under the conditions specified in S4.4 for as long as the malfunction exists, whenever the ignition locking system is in the ''On'' (''Run'') position; and

(4) (i) Except as provided in paragraph (ii), each dedicated TPMS malfunction telltale must be activated as a check of lamp function either when the ignition locking system is activated to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

(ii) The dedicated TPMS malfunction telltale need not be activated when a starter interlock is in operation.

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(1) Meets the requirements of S4.2 and S4.3; and

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After this period of prescribed flashing, the telltale must remain continuously illuminated as long as the malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected.

S4.5 *Written instructions.*

(a) The owner's manual in each vehicle certified as complying with S4 must provide an image of the Low Tire Pressure Telltale symbol (and an image of the TPMS Malfunction Telltale warning (''TPMS''), if a dedicated telltale is utilized for this function) with the following statement in English:

Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should determine the proper tire inflation pressure for those tires.)

As an added safety feature, your vehicle has been equipped with a tire pressure monitoring system (TPMS) that illuminates a low tire pressure telltale when one or more of your tires is significantly under-inflated. Accordingly, when the low tire pressure telltale illuminates, you should stop and check your tires as soon as possible, and inflate them to the proper pressure. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.

Please note that the TPMS is not a substitute for proper tire maintenance, and it is the driver's responsibility to maintain

correct tire pressure, even if under-inflation has not reached the level to trigger illumination of the TPMS low tire pressure telltale.

[The following paragraph is required for all vehicles certified to the standard starting on September 1, 2007 and for vehicles voluntarily equipped with a compliant TPMS MIL before that time.] Your vehicle has also been equipped with a TPMS malfunction indicator to indicate when the system is not operating properly. [For vehicles with a dedicated MIL telltale, add the following statement: The TPMS malfunction indicator is provided by a separate telltale, which displays the symbol ''TPMS'' when illuminated.] [For vehicles with a combined low tire pressure/MIL telltale, add the following statement: The TPMS malfunction indicator is combined with the low tire pressure telltale. When the system detects a malfunction, the telltale will flash for approximately one minute and then remain continuously illuminated. This sequence will continue upon subsequent vehicle start-ups as long as the malfunction exists.] When the malfunction indicator is illuminated, the system may not be able to detect or signal low tire pressure as intended. TPMS malfunctions may occur for a variety of reasons, including the installation of replacement or alternate tires or wheels on the vehicle that prevent the TPMS from functioning properly. Always check the TPMS malfunction telltale after replacing one or more tires or wheels on your vehicle to ensure that the replacement or alternate tires and wheels allow the TPMS to continue to function properly.

(b) The owner's manual may include additional information about the time for the TPMS telltale(s) to extinguish once the low tire pressure condition or the malfunction is corrected. It may also include additional information about the significance of the low tire pressure warning telltale illuminating, a description of corrective action to be undertaken, whether the tire pressure monitoring system functions with the vehicle's spare tire (if provided), and how to use a reset button, if one is provided.

(c) If a vehicle does not come with an owner's manual, the required information shall be provided in writing to the first purchaser of the vehicle.

S5 *Test conditions.*

S5.1 *Ambient temperature.* The ambient temperature is between 0°C (32°F) and 40°C (104°F).

S5.2 *Road test surface.* Compliance testing is conducted on any portion of the Southern Loop of the Treadwear Test Course defined in Appendix A and Figure 2 of section 575.104 of this chapter. The road surface is dry during testing.

S5.3 *Vehicle conditions.*

S5.3.1 *Test weight.* The vehicle may be tested at any weight between its lightly loaded vehicle weight and its gross vehicle weight rating (GVWR) without exceeding any of its gross axle weight ratings.

S5.3.2 *Vehicle speed.* The vehicle's TPMS is calibrated and tested at speeds between 50 km/h (31.1 mph) and 100 km/h (62.2 mph). For vehicles equipped with cruise control, cruise control is not to be engaged during testing.

S5.3.3 *Rim position.* The vehicle rims may be positioned at any wheel position, consistent with any related instructions or limitations in the vehicle owner's manual.

S5.3.4 *Stationary location.* The vehicle's tires are shaded from direct sun when the vehicle is parked.

S5.3.5 *Brake pedal application.* Driving time shall not accumulate during service brake application.

S5.3.6 *Range of conditions or test parameters.* Whenever a range of conditions or test parameters is specified in this standard, the vehicle must meet applicable requirements when tested at any point within the range.

S5.3.7 *Tires.* The vehicle is tested with the tires installed on the vehicle at the time of initial vehicle sale, excluding the spare tire (if provided). However, the spare tire may be utilized for TPMS malfunction testing purposes.

S6 *Test procedures.*

(a) Inflate the vehicle's tires to the cold tire inflation pressure(s) provided on the vehicle placard or the tire inflation pressure label.

(b) With the vehicle stationary and the ignition locking system in the ''Lock'' or ''Off'' position, activate the ignition locking system to the ''On'' (''Run'') position or, where applicable, the appropriate position for the lamp check. The tire pressure monitoring system must perform a check of lamp function for the low tire pressure telltale as specified in paragraph S4.3.3 of this standard. If the vehicle is equipped with a separate TPMS malfunction telltale, the tire pressure monitoring system also must perform a check of lamp function as specified in paragraph S4.4(b)(4) of this standard.

(c) If applicable, set or reset the tire pressure monitoring system in accordance with the instructions in the vehicle owner's manual.

(d) *System calibration/learning phase.*

(1) Drive the vehicle for up to 15 minutes of cumulative time (not necessarily continuously) along any portion of the test course.

(2) Reverse direction on the course and drive the vehicle for an additional period of time for a total cumulative time of 20 minutes (including the time in S6(d)(1), and not necessarily continuously).

(e) Stop the vehicle and deflate any combination of one to four tires until the deflated tire(s) is (are) at 14 kPa (2 psi) below the inflation pressure at which the tire pressure monitoring system is required to illuminate the low tire pressure warning telltale.

(f) *System detection phase.*

(1) Within 5 minutes of reducing the inflation pressure in the tire(s), drive the vehicle for up to 10–15 minutes of cumulative time (not necessarily continuously) along any portion of the test course.

(2) Reverse direction on the course and drive the vehicle for an additional period of time for a total cumulative time of 20 minutes (including the time in S6(f)(1), and not necessarily continuously).

(3) The sum of the total cumulative drive time under paragraphs S6(f)(1) and (2) shall be the lesser of 20 minutes or the time at which the low tire pressure telltale illuminates.

(4) If the low tire pressure telltale did not illuminate, discontinue the test.

(g) If the low tire pressure telltale illuminated during the procedure in paragraph S6(f), deactivate the ignition locking system to the ''Off'' or ''Lock'' position. After a 5-minute period, activate the vehicle's ignition locking system to the ''On'' (''Run'') position. The telltale must illuminate and remain illuminated as long as the ignition locking system is in the ''On'' (''Run'') position.

(h) Keep the vehicle stationary for a period of up to one hour with the engine off.

(i) Inflate all of the vehicle's tires to the same inflation pressure used in paragraph S6(a). If the vehicle's tire pressure monitoring system has a manual reset feature, reset the system in accordance with the instructions specified in the vehicle owner's manual. Determine whether the telltale has extinguished. If necessary, drive the vehicle until the telltale has been extinguished.

(j) The test may be repeated, using the test procedures in paragraphs S6(a)–(b) and S6(d)–(i), with any one, two, three, or four of the tires on the vehicle under-inflated.

(k) Simulate one or more TPMS malfunction(s) by disconnecting the power source to any TPMS component, disconnecting any electrical connection between TPMS components, or installing a tire or wheel on the vehicle that is incompatible with the TPMS.

(l) *TPMS malfunction detection.*

(1) Drive the vehicle for up to 15 minutes of cumulative time (not necessarily continuously) along any portion of the test course.

(2) Reverse direction on the course and drive the vehicle for an additional period of time for a total cumulative time of 20 minutes (including the time in S6(l)(1), and not necessarily continuously).

(3) The sum of the total cumulative drive time under paragraphs S6(l)(1) and (2) shall be the lesser of 20 minutes or the time at which the TPMS malfunction telltale illuminates.

(4) If the TPMS malfunction indicator did not illuminate in accordance with paragraph S4.4, as required, discontinue the test.

(m) If the TPMS malfunction indicator illuminated during the procedure in paragraph S6(l), deactivate the ignition locking system to the ''Off'' or ''Lock'' position. After a 5-minute period, activate the vehicle's ignition locking system to the ''On'' (''Run'') position. The TPMS malfunction indicator must again signal a malfunction and remain illuminated as long as the ignition locking system is in the ''On'' (''Run'') position.

(n) Restore the TPMS to normal operation. If necessary, drive the vehicle until the telltale has extinguished.

S7 *Phase-in schedule.*

S7.1 *Vehicles manufactured on or after October 5, 2005, and before September 1, 2006.* For vehicles manufactured on or after October 5, 2005, and before September 1, 2006, the number of vehicles complying with this standard (except for the provisions of S4.4 unless the manufacturer elects to also certify to those provisions) must not be less than 20 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2002, and before October 5, 2005; or

(b) The manufacturer's production on or after October 5, 2005, and before September 1, 2006.

S7.2 *Vehicles manufactured on or after September 1, 2006, and before September 1, 2007.* For vehicles manufactured on or after September 1, 2006, and before September 1, 2007, the number of vehicles complying with this standard (except for the provisions of S4.4 unless the manufacturer elects to also certify to those provisions) must not be less than 70 percent of:

(a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2003, and before September 1, 2006; or

(b) The manufacturer's production on or after September 1, 2006, and before September 1, 2007.

S7.3 *Vehicles manufactured on or after September 1, 2007.* Except as provided in S7.7, all vehicles manufactured on or after September 1, 2007 must comply with all requirements of this standard.

S7.4 *Calculation of complying vehicles.*

(a) *Carry-Forward Credits.* For purposes of complying with S7.1, a manufacturer may count a vehicle if it is certified as complying with this standard and is manufactured on or after April 8, 2005, but before September 1, 2006.

(b) For purposes of complying with S7.2, a manufacturer may count a vehicle if it:

(1) (i) Is certified as complying with this standard and is manufactured on or after April 8, 2005, but before September 1, 2007; and

(ii) Is not counted toward compliance with S7.1; or

(2) Is manufactured on or after September 1, 2006, but before September 1, 2007.

(c) *Carry-Backward Credits.* At the vehicle manufacturer's option, for purposes of complying with S7.1, a manufacturer may count a vehicle it plans to manufacture and to certify as complying with this standard that will be produced on or after September 1, 2006 but before September 1, 2007. However, a vehicle counted toward compliance with S7.1 may not be counted toward compliance with S7.2. If the vehicle manufacturer decides to exercise the option for carry-backward credits, the manufacturer must indicate this in its report for the production period corresponding to S7.1 filed pursuant to 49 CFR 585.66. The vehicles are counted in fulfillment of the requirements of S7.1, subject to actually being produced in compliance with this standard during the specified time period and not being counted toward the requirements of S7.2.

S7.5 *Vehicles produced by more than one manufacturer.*

S7.5.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S7.1 through S7.3, a vehicle produced by more than one manufacturer must be attributed to a single manufacturer as follows, subject to S7.5.2:

(a) A vehicle that is imported must be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, must be attributed to the manufacturer that markets the vehicle.

S7.5.2 A vehicle produced by more than one manufacturer must be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S7.5.1.

S7.6 *Small volume manufacturers.* Vehicles manufactured by a manufacturer that produces fewer than 5,000 vehicles for sale in the United States during the period of September 1, 2005 to August 31, 2006, or the period from September 1, 2006 to August 31, 2007, are not subject to the corresponding requirements of S7.1, S7.2, and S7.4.

S7.7 *Final-stage manufacturers and alterers.* Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S7.1 through S7.4. Instead, vehicles that are manufactured in two or more stages or that are altered must comply with this standard beginning on September 1, 2008.

Tables to § 571.138

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE

Column 1—tire type	Column 2—maximum or rated inflation pressure		Column 3—minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
P-metric—Standard Load	240,	35,	140	20
	300, or	44, or	140	20
	350	51	140	20
P-metric—Extra Load	280 or	41 or	160	23
	340	49	160	23

TABLE 1.—LOW TIRE PRESSURE WARNING TELLTALE—MINIMUM ACTIVATION PRESSURE—Continued

Column 1—tire type	Column 2—maximum or rated inflation pressure		Column 3—minimum activation pressure	
	(kPa)	(psi)	(kPa)	(psi)
Load Range C	350	51	200	29
Load Range D	450	65	240	35
Load Range E	550	80	240	35

PART 585—PHASE–IN REPORTING REQUIREMENTS

■ 4. The authority citation for Part 585 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 5. Part 585 is amended by adding Subpart G as follows:

Subpart G—Tire Pressure Monitoring System Phase-in Reporting Requirements

Sec.
585.61 Scope.
585.62 Purpose.
585.63 Applicability.
585.64 Definitions.
585.65 Response to inquiries.
585.66 Reporting requirements.
585.67 Records.
585.68 Petition to extend period to file report.

Subpart G—Tire Pressure Monitoring System Phase-in Reporting Requirements

§ 585.61 Scope.

This subpart establishes requirements for manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, to submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the requirements of Standard No. 138, *Tire pressure monitoring systems* (49 CFR 571.138).

§ 585.62 Purpose.

The purpose of these reporting requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with Standard No. 138.

§ 585.63 Applicability.

This subpart applies to manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle. However, this subpart does not apply to manufacturers whose production consists exclusively of vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of the chapter. In addition, this subpart does not apply to manufacturers whose production of motor vehicles for the United States market is less than 5,000 vehicles in a production year.

§ 585.64 Definitions.

Production year means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

§ 585.65 Response to inquiries.

At any time prior to August 31, 2007, each manufacturer must, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with Standard No. 138. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable. Upon request, the manufacturer also must specify whether it intends to utilize either carry-forward or carry-backward credits, and the vehicles to which those credits relate.

§ 585.66 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2006 and August 31, 2007, each manufacturer must submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 138 (49 CFR 571.138) for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of less than 4,536 kilograms (10,000 pounds) produced in that year. Each report must—

(1) Identify the manufacturer;

(2) State the full name, title, and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding whether or not the manufacturer complied with the requirements of Standard No. 138 (49 CFR 571.138) for the period covered by the report and the basis for that statement;

(5) Provide the information specified in paragraph (b) of this section;

(6) Be written in the English language; and

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(b) *Report content*—(1) *Basis for statement of compliance.* Each manufacturer must provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, except those vehicles with dual wheels on an axle, manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the current production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) *Production.* Each manufacturer must report for the production year for which the report is filed: the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less that meet Standard No. 138 (49 CFR 571.138).

(3) *Statement regarding compliance.* Each manufacturer must provide a statement regarding whether or not the manufacturer complied with the TPMS requirements as applicable to the period covered by the report, and the basis for that statement. This statement must include an explanation concerning the use of any carry-forward and/or carry-backward credits.

(4) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S7.5.2 of Standard No. 138 (49 CFR 571.138) must:

(i) Report the existence of each contract, including the names of all parties to the contract, and explain how

the contract affects the report being submitted.

(ii) Report the actual number of vehicles covered by each contract.

§ 585.67 Records.

Each manufacturer must maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.66(b)(2) until December 31, 2009.

§ 585.68 Petition to extend period to file report.

A manufacturer may petition for extension of time to submit a report under this Part. A petition will be granted only if the petitioner shows good cause for the extension and if the extension is consistent with the public interest. The petition must be received not later than 15 days before expiration of the time stated in § 585.66(a). The filing of a petition does not automatically extend the time for filing a report. The petition must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Issued: March 31, 2005.

Jeffrey W. Runge,

Administrator.

[FR Doc. 05–6741 Filed 4–7–05; 8:45 am]

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Federal Register

Friday,
April 8, 2005

Part IV

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4936–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2004

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2004, and ending on December 31, 2004.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone 202–708–3055 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2004.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). This notice covers waivers of regulations granted by HUD from October 1, 2004, through December 31, 2004. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2004) before the next report is published (the first quarter of calendar year 2005), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: April 1, 2005.

Kathleen D. Koch,

Deputy General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2004, Through December 31, 2004

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.
II. Regulatory waivers granted by the Office of Housing.
III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulations:* 24 CFR 92.214(a)(6).

Project/Activity: The State of Oregon requested a waiver of the § 92.214(a)(6) of the HOME Program regulations (24 CFR part 92).

Nature of Requirement: Section 92.214(a)(6) of the HOME Program regulations states that, except up to one year after project completion, HOME assistance may not be provided to a project previously assisted with HOME funds during the period of affordability.

Granted By: Roy A. Bernardi.

Date Granted: October 26, 2004.

Reasons Waived: The Community Partners for Affordable Housing (CPAH), and its partners worked to correct physical, management and financial problems, they explored whether the project would be viable with improvements through a market study, determined what repairs and improvements were needed through thorough inspections, and secured funds for emergency repairs.

Contact: Shawna Burrell, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulations:* 24 CFR 92.251(a) and 24 CFR 92.254(b)(4).

Project/Activity: The State of West Virginia requested a waiver at 24 CFR 92.251(a) and 254(b)(4) to facilitate an emergency home repair program serving the victims of flooding in presidentially-declared disaster areas.

Nature of Requirement: The HOME program regulations at 24 CFR 92.251(a) require all units rehabilitated with HOME funds to meet specific property standards. The HOME program regulations at 24 CFR

254(b)(4) requires homeownership units assisted with HOME funds to have after rehabilitation values that do not exceed 95 percent of area median purchase price.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: December 28, 2004.

Reasons Waived: The waiver was granted to permit the state to respond expeditiously to the needs of affected low-income homeowners in the presidentially-declared disaster areas irrespective of the value of their homes. The waiver will also permit the state to more efficiently use its limited HOME funding to address only disaster-related damage to the homes, without being required to address all other deficiencies in the homes.

Contact: Shawna Burrell, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulations:* 24 CFR 92.252 and 254(a)(3).

Project/Activity: The Tennessee Housing Development Agency (THDA) requested a waiver on behalf of the Housing Development Corporation Clinch Valley (HDC).

Nature of Requirement: THDA requested that a HOME-assisted homebuyer unit that was subsequently sold and operated as rental unit be permitted to qualify as affordable housing under § 92.252. Section 92.254(a)(3) of the HOME Program regulations states that the homebuyer must be low-income and the housing must be the family's primary residence for the period of affordability.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: November 12, 2004.

Reasons Waived: The purpose of conversion of the unit to rental housing was to preserve an affordable housing resource and meet a need in the community, to benefit the disabled.

Contact: Shawna Burrell, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–2684.

• *Regulations:* 24 CFR 570.208(a)(3), 24 CFR 570.208(a)(1), 24 CFR 570.5, and 24 CFR 570.201(n).

Project/Activity: Dane County of Wisconsin has requested a waiver under 24 CFR 570.208(a)(3) of the CDBG program regulations.

Nature of Requirements: HUD's regulations in 24 CFR 570.208 require that at least 51 percent of the units in a multi-unit residential structure and 100 percent of single unit residential structures be occupied by low- and moderate-income households.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: December 14, 2004.

Reasons Waived: The waiver will allow less than 100 percent of the single unit structures to be sold to low- and moderate-income households, which will increase the supply of affordable housing available to such households while using a relatively modest investment of CDBG funds, as a proportion of the total cost. The granting of this waiver is consistent with the Housing and Community Development Act of 1974.

Contact: Gloria Coates, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–1577.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: High Park Terrace Cooperative, Newark, New Jersey, FHA Project Number: 031–55032.

Nature of Requirement: Section 219.220(b) governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project. * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: The waiver was granted in order to allow the owner of High Park Terrace Cooperative to prepay the mortgage and forbear repayment of the outstanding Flexible Subsidy loan upon prepayment of the insured mortgage until January 1, 2012, the original insured mortgage maturity date. The cooperative has maintained affordability under the section 221(d)(3) Below Market Interest Rate (BMIR) program but has in recent years experienced difficulty in maintaining and improving the property due to budgetary constraints. The waiver allows the cooperative to prepay the existing mortgage and refinance to perform substantial rehabilitation of the property and allow the repayment of the Flexible Subsidy loan.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Lakeview Towers, FHA Project No: 071–55109, Chicago, Illinois.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project. * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: The waiver was granted to allow the owners to repay a Flexible Subsidy loan and refinance a section 221(d)(3) BMIR mortgage with a section 221(d)(4) mortgage. There is also a note from the Illinois Housing Development Authority in third position. The Flexible Subsidy note is in fourth position. Waiver of this regulation will allow the owner to defer payment of the Flexible Subsidy loan, which will then be placed in third position. The owner is proposing to pay off the first and second mortgages. Funds in the amount of $10.7 million will be made available to complete needed repairs and rehabilitation and allow the project to maintain rents at an affordable level.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 219.220(b).

Project/Activity: Community Homes Project, Baltimore, Maryland.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the prepayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 and states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of mortgage insurance, prepayment of the mortgage, or a sale of the project. * * *'' Either of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 23, 2004.

Reason Waived: The waiver was granted for the required repayment of the existing Flexible Subsidy note of $853,130. Flexible Subsidy was provided to assist the owner with repairs and upgrades in return for maintaining the low-income character and use of this property. The Flexible Subsidy note as originally written is due on sale of the property, refinance or prepayment of the first mortgage. The waiver allows transfer of the assumption of the Flexible Subsidy note to the new purchaser. This action is necessary to ensure the long-term viability of the property as a low-income housing resource.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 291.100(a)(ii).

Project/Activity: Competitive bidding on property located at 920 Page Street, Kewanee, IL.

Nature of Requirement: Section 291.100(a)(ii) of HUD's regulations does not permit a non-occupant mortgagor (whether an original mortgagor, assumption, or a person who purchased ''subject to'') of an insured mortgage who has defaulted, thereby causing HUD to pay an insurance claim on the mortgage to repurchase the same property.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2004.

Reason Waived: Granting of the waiver advances HUD's goal of expanding homeownership opportunities and increase access to affordable housing. In addition, the sale of the property provides the maximum return to the mortgage insurance fund.

Contact: Wanda Sampedro, Director of Asset Management Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–1672.

• *Regulation:* 24 CFR 291.570.

Project/Activity: The waiver is applicable to the Officer Next Door/Teacher Next Door Sales program. The waiver was requested for certain owners called for active military duty during the owner-occupancy requirement period required by the program.

Nature of Requirement: Section 291.570 of HUD's regulations provides that to remain a participant in the Officer Next Door Sales program, the owner must, for the entire duration of the owner-occupancy term.

Granted By: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 2004.

Reason Waived: The waiver request was to allow a purchaser of a program home called to active military service during the first three years of ownership (*e.g.*, required owner-occupant period) to count the service on active duty towards satisfaction of the three-year requirement. The Department recognizes the impossibility of performance of the occupancy requirement by OND/TND borrowers who are currently fulfilling the requirements of their occupancy period, and are called to active military duty at posts outside the commuting area of their hometowns. Permitting OND/TND borrowers to receive credit for time served on active military duty as a credit against the OND/TND program occupancy requirement will not be detrimental to the insurance fund.

Contact: Wanda Sampedro, Director of Asset Management Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–1672.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
12135678	Mercy Terrace	CA
10135304	La Alma Housing	CO
01735218	Country Village Apartments	CT
07235085	Dawson Manor	IL
07135436	Roosevelt Independence	IL
07135468	Universal City Apartments	IL
05935181	Bond House	LA
05938005	Wellington Square	LA
04735183	Weston Apartments	MI
05335426	California Arms Apartments	NC
04235395	Lawrence Saltis Plaza	OH
04635448	Manorview Apartments	OH
04235383	Northgate Apartments	OH
03335119	Grayson Court	PA
10510501	Lorna Doone Apartments	UT
08411044	John B Hughes I & II ...	MO

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 19, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
06235383	Jefferson Davis Apartments	AL
06135382	Capitol Towers	GA
08335352	Grand Central Apartments	KY
05235400	Franklin Square School Apartments	MD
01435059	Roosevelt Apartments	NY
03435213	Breslyn Apartments	PA

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–0001.

• *Regulation:* 24 CFR 401.600.

Project/Activity: The following projects requested waivers to the 12-month limit at above-market rents (24 CFR 401.600):

FHA No.	Project	State
00035320	Southview II Apartments	DC
07392501	Andrews Gardens Apartments	IN
07335416	Gary NSA III Apartments	IN
02335287	Centennial Island Apartments	MA
02335268	Piedmont Brightside Apartments	MA
01332005	Amsterdam Sr. Citizen Housing	NY
05435476	Woods Edge Apartments	SC
05435494	Standpoint Vista Apartments	SC
11335067	Gholson Hotel	TX
10535074	Massey Plaza	UT
10535071	Milford Haven Apartments	UT
12735346	Jackson Apartments	WA
06694016	Federal Apartments	FL

Nature of Requirement: Section 401.600 requires that projects be marked down to market rents within 12 months of their first expiration date after January 1, 1998. The intent of this provision is to ensure timely processing of requests for restructuring and that the properties will not default on their FHA insured mortgages during the restructuring process.

Granted By: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 23, 2004.

Reason Waived: The projects listed above were not assigned to the participating administrative entities (PAEs) in a timely manner or the restructuring analysis was unavoidably delayed due to no fault of the owner.

Contact: Norman Dailey, Office of Affordable Housing Preservation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–0001.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Florida Housing Finance Corporation, Tallahassee, Florida.

Nature of Requirement: Section 883.606(b) entitles the state agency to a reasonable fee, determined by HUD, for constructed or substantially rehabilitated units provided there is no override on the permanent loan granted by the state agency to the owner for a project containing assisted units.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: The regulation was waived in order to rectify the omission to earlier

enforce a regulatory prohibition of both contract administration fees and bond yield override in connection with the same project and neglected to issue formal waivers at the time of approval. HUD proposed to correct this oversight by providing agencies in violation of this rule an opportunity to request and justify formal waivers. Since the Florida Housing Finance Corporation has only used override revenues for projects which comply with the requirements of section 1012 of the McKinney Act and are allocated to the state agency's very-low income housing programs which conforms and supports the affordable housing objectives of the McKinney Act and HUD's bond refunding program, the waiver is granted to the 1992 Series A General Mortgage Revenue Refunding Bonds of the Florida Housing Finance Corporation.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 883.606(b).

Project/Activity: Oregon Department of Housing and Community Services, Salem, Oregon.

Nature of Requirement: Section 883.606(b) entitles the state agency to a reasonable fee, determined by HUD, for constructed or substantially rehabilitated units provided there is no override on the permanent loan granted by the state agency to the owner for a project containing assisted units.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 5, 2004.

Reason Waived: The waiver of the regulation permits the collection of both contract administration fees and bond yield override in connection with the same projects. Since the Oregon Housing and Community Services Department uses override revenues for projects which comply with the requirements of section 1012 of the McKinney Act and are allocated to the state agency's very-low income housing programs which conforms and supports the affordable housing objectives of the McKinney Act and HUD's bond refunding program, the waiver is granted to the Series A 2004 Mortgage Revenue Refunding Bonds of the Oregon Housing and Community Services Department.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3730.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cedar Oaks Place, Kerrville, TX, Project Number: 115–HD039/TX59–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 5, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cornhill Apartments, Rochester, NY, Project Number: 014–HD099/NY06–Q001–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 6, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bishop Goedert Residences, Hines, IL, Project Number: 071–EE178/IL06–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 8, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Fair Haven West, Pella, IA, Project Number: 074–EE044/IA05–S031–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 8, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Robert H. Moore Senior Housing, Brooklyn, NY, Project Number: 012–EE324/NY36–S021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 13, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: VOA Sandusky, Sandusky, OH, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: St. George Housing, Superior, WI, Project Number: 075–HD074/WI39–Q021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Windham Willows, Windham, NY, Project Number: 014–EE210/NY06–S011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: TBD, Niskayuna, NY, Project Number: 014–HD120/NY06–Q031–010.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: William W. Winpisinger, Cleveland, OH, Project Number: 042–EE145/OH12–S021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: New Courtland 202, Philadelphia, PA, Project Number: 034–EE119/PA26–S011–009.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Natural Bridge Group Home, Natural Bridge, VA, Project Number: 051–HD122/VA36–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 27, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: NCR of Holy Trinity, Bedford Heights, OH, Project Number: 042–EE142/OH12–S021–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Philip Murray House II, Philadelphia, PA, Project Number: 034–EE102/PA26–S001–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 29, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner has exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Deltona Gardens, Deltona, FL, Project Number: 067–HD087/FL29–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Owatonna Senior Housing, Owatonna, Minnesota, Project Number: 092–EE094/MN46–S031–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jubilee Senior Homes, Berkeley, CA, Project Number: 121–EE156/CA39–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 4, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: VOA Sandusky, Sandusky, OH, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 8, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Homestreet II, Hillsboro, OR, Project Number: 126–HD034/OR16–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Cedar Hill Apartments, Joplin, MO, Project Number: 084–HD046/MO16–Q031–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Holy Cross Manor, Palmetto, FL, Project Number: 067–EE126/FL29–S031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Friendship House, Gretna, LA, Project Number: 064–HD074/LA48–Q021–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Daisy House, Rochester, NY, Project Number: 014–EE208/NY06–S011–007.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Abilities at San Juan II, Melbourne, FL, Project Number: 067–HD093/FL29–Q031–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ASI Grand Forks, Grand Forks, ND, Project Number: 094–HD011/ND99–Q021–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 9, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Ross Court Group Home, Portsmouth, VA, Project Number: 051–HD110/VA36–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 15, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Trinity Apartments of Lakeland, Lakeland, FL, Project Number: 067–EE127/FL29–S031–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Options Supported Housing Project IX, New York, NY, Project Number: 012–HD117/NY36–Q031–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Hemlock Nob Apartments, Tannersville, NY, Project Number: 014–EE209/NY06–S011–008.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Gruber Mills at Spring City, Spring City, PA, Project Number: 034–EE123/PA26–S021–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Woodside Village IV, Oak Bluffs, MA, Project Number: 023–EE119/MA06–S001–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 5, 2004.

Reason Waived: Additional time was needed to secure the title and builder's permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: BCARC Homes, IV, Inc., Palm Bay, FL, Project Number: 067–HD086/FL29–Q011–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 5, 2004.

Reason Waived: Additional time was needed for the owner to correct deficiencies in the firm commitment application and secure another general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: McDowell County Housing Action Network, War, WV, Project Number: 045–EE015/WV15–S011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 8, 2004.

Reason Waived: Additional time was needed for the owner to revise the plans and specifications.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: The Center on Halsted, Chicago, IL, Project Number: 071–HD122/IL06–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: Additional time was needed for the owner to secure the building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cottonwood Manor VIII, Cottonwood, AZ, Project Number: 123–EE081/AZ20–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: Additional time was needed for the firm commitment to be issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Creative Living, Andover, MA, Project Number: 023–HD174/MA06–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: Additional time was needed for the owner to obtain access to adequate sewerage.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Alison House, Lansing, MI, Project Number: 047–HD029/MI33–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 15, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Adams Bodine Apartments, Louisville, KY, Project Number: 083–HD073/KY36–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2004.

Reason Waived: Additional time was needed for the owner to modify the plans due to a new zoning ordinance.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gulfport Manor, Gulfport, MS, Project Number: 065–EE031/MS26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Independence Hill, Moscow, ID, Project Number: 124–HD011/ID16–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Deltona Gardens, Deltona, FL, Project Number: 067–HD087/FL29–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 18, 2004.

Reason Waived: Additional time was needed for the owner to resolve design issues raised by the City of Deltona.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Sterling Senior Housing, Bellingham, WA, Project Number: 127–EE038/WA19–S021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 19, 2004.

Reason Waived: Additional time was needed for the owner to obtain a new contractor due to a conflict of interest.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Elizabeth House, Seattle, WA, Project Number: 127–EE032/WA19–S011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2004.

Reason Waived: Additional time was needed for the owner to obtain endangered species clearance from the U.S. Fish and Wildlife Service.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Options Middlesex, Inc., Old Bridge, NJ, Project Number: 031–HD111/NJ39–Q001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemet Ability First, Hemet, CA, Project Number: 122–HD130/CA16–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 20, 2004.

Reason Waived: Additional time was needed for the owner to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: South Seven Senior Housing, Port Hadlock, WA, Project Number: 127–EE036/WA19–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: Additional time was needed for the owner to obtain the permit and modify the project's design and specifications based on the County's new codes.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Philip Murray House II, Philadelphia, PA, Project Number: 034–EE102/PA26–S001–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: Owner needed additional time to resolve site issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street,

SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bickford Street, Jamaica Plain, MA, Project Number: 023–EE146/MA06–S011–018.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: Additional time was needed for the project to achieve initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Green Garden Apartments, Lockport, IL, Project Number: 071–HD129/IL06–Q021–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: Additional time was needed for the owner to resolve wetlands and rezoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lord Stirling Senior Housing, New Brunswick, NJ, Project Number: 031–EE060/NJ39–S021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 22, 2004.

Reason Waived: Additional time was needed for the owner to obtain additional funding and submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hunterdone Consumer Home, East Amwell, NJ, Project Number: 031–HD121/NJ39–Q001–012.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 26, 2004.

Reason Waived: Additional time was needed for the township to review and approve the project's septic design.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Union County Supportive Living, Roselle Park, NJ, Project Number: 031–HD127/NJ39–Q011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 26, 2004.

Reason Waived: Additional time was needed for the owner to resolve site issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hemlock Nob Estates, Tannersville, NY, Project Number: 014–EE209/NY06–S011–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 26, 2004.

Reason Waived: Additional time was needed for HUD to reprocess the firm commitment application due to site change.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Snowden House, Dorchester, MA, Project Number: 023–EE115/MA06–S991–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 26, 2004.

Reason Waived: Additional time was needed for HUD to reprocess the firm commitment application due to a change in the general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Walnut Grove, Vancouver, WA, Project Number: 126–EE045/OR16–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 27, 2004.

Reason Waived: Additional time was needed for the owner to redesign the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Harvard Square, Irvine, CA, Project Number: 143–HD011/CA43–Q001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: Additional time was needed for the owner to obtain a new contractor, prepare offsite utility engineering drawings and secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope VII, Sussex, NJ, Project Number: 031–HD130/NJ39–Q011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: Additional time was needed for the owner to obtain the permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and

Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: George Sullivan Manor, Anchorage, AK, Project Number: 176–EE027/AK06–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: Additional time was needed due to a site change.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Royal Palm Apartments, Opa Locka, FL, Project Number: 066–EE085/FL29–S011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Additional time was needed for the owner to resolve site-related and construction cost issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Regina, West Palm Beach, FL, Project Number: 066–EE086/FL29–S011–010.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Additional time was needed for the owner to finalize the plans, obtain a revised cost analysis and secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Faith Residence Apartments, Belle Plaine, MN, Project Number: 092–HD059/MN46–Q021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Additional time was needed for the owner to secure supplemental funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Highland County VOA Living Center, Sebring, FL, Project Number: 067–HD091/FL29–Q021–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Additional time was needed for the owner to prepare and for HUD review of the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Homestreet Inc., Hillsboro, Hillsboro, OR, Project Number: 126–HD034/OR16–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Additional time was needed for the owner to resolve cost issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fairbanks Community Mental Health Center, Fairbanks, AK, Project Number: 176–HD021/AK06–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2004.

Reason Waived: Additional time was needed for HUD to process and issue the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Anixter Village, Chicago, IL, Project Number: 071–HD128/IL06–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2004.

Reason Waived: Additional time was needed for the owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Whally Avenue Housing II, New Haven, CT, Project Number: 017–HD031/CT26–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 2, 2004.

Reason Waived: Additional time was needed for the owner to resolve deficiencies in the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: River View Gardens, New York, NY, Project Number: 012–EE195/NY36–S961–013.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: Additional time was needed for HUD to process the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and

Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gill Terrace Senior Housing II, Ludlow, VT, Project Number: 024–EE066/VT36–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: Additional time was needed for the owner to select a general contractor and submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Windham Willows, Windham, NY, Project Number: 014–EE210/NY06–S011–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: Additional time was needed for the owner to secure approval of the storm water drainage plan.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: New Stuyahok Senior Apartments, New Stuahok, AK, Project Number: 176–EE026/AK06–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 5, 2004.

Reason Waived: Additional time was needed for owner to submit the documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NCR of Holy Trinity, Bedford Heights, OH, Project Number: 042–EE142/OH12–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 9, 2004.

Reason Waived: Additional time was needed for HUD to process and issue the firm commitment

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Project Live XIII, Newark, NJ, Project Number: 031–HD133/NJ39–Q021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 10, 2004.

Reason Waived: Additional time was needed for the owner to locate an alternate site and find a contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: NJCDC Supportive Housing 2002, Hawthorne, NJ, Project Number: 031–HD135/NJ39–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 10, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Calloway Street One, Salisbury, MD, Project Number: 052–EE042/MD06–S011–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa at Bayou Park, Houston, TX, Project Number: 114–HD019/TX24–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed due to a change of site and for HUD review of the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Preferred Supportive Housing 2, Toms River, NJ, Project Number: 035–HD051/NJ39–Q021–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Green Gables, Huntington, WV, Project Number: 045–HD034/WV15–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to review the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant

Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Independence II Consumer Home, Mount Laurel, NJ, Project Number: 035–HD048/NJ39–Q011–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for the Owner to locate an alternate site, arrange for additional funding and find a general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Columbia Supportive Living, Knowlton, NJ, Project Number: 031–HD131/NJ39–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fayete Hills Unity, Oak Hill, WV, Project Number: 04–HD033/WV15–Q011–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for the owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hickory Lane One, Princess Anne, MD, Project Number: 052–EE035/MD06–S001–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed due to a site change.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Monmouth Homes 2002, Freehold, NJ, Project Number: 031–HD134/NJ39–Q021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: LaPalma Apartments, Miami, FL, Project Number: 066–EE093/FL29–S021–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for the owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: McGregor Apartments, East Cleveland, OH, Project Number: 042–EE138/OH12–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to issue the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Residence Connection, Bowling Green, OH, Project Number: 042–HD111/OH12–Q021–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 12, 2004.

Reason Waived: Additional time was needed for HUD to issue the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nuiqsut Alaska, Nuiqsut, AK, Project Number: 176–EE033/AK06–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 14, 2004.

Reason Waived: Additional time was needed for the owner to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Wren's Way, Wooster, OH, Project Number: 042–HD108/OH12–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vernon Senior Housing, Vernon, VT, Project Number: 024–EE068/VT36–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2004.

Reason Waived: Additional time was needed for the owner to secure the permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Point Hope, Alaska, Point Hope, AK, Project Number: 176–EE029/AK06–—021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2004.

Reason Waived: Additional time was needed for the owner to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Wainwright, Alaska, Wainwright, AK, Project Number: 176-EE031/AK06-S021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 16, 2004.

Reason Waived: Additional time was needed for the owner to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Fullerton Apartments, Fullerton, CA, Project Number: 143–HD014/CA43–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 17, 2004.

Reason Waived: Additional time was needed for the City of Fullerton to complete the plan check review.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Kaktovik, Alaska, Kaktovik, Alaska, Project Number: 176–EE030/AK06–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed for the owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope VIII Consumer Home, Franklin, NJ, Project Number: 031–HD132/NJ39–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed due to a site change and for the owner to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Cecilian Village, Philadelphia, PA, Project Number: 034–EE121/PA26–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed due to a site change.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: William W. Winpisinger, Cleveland, OH, Project Number: 042–EE145/OH12–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed for the owner to resolve issues with the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Pioneer Abodes, Portland, OR, Project Number: 126–HD037/OR16–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed for the owner to resolve design issues due to a recent change in local design requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Vincent De Paul Gardens, Miami, FL, Project Number: 066–EE089/FL29–S021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed for the owner to respond to

deficiency items in the initial closing package.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: OMHS Housing 2002, Lanoka Harbour, NJ, Project Number: 035–HD052/NJ39–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed due to a site change and for the owner to obtain additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Nanaikeola Senior Apartments, Waianae, HI, Project Number: 140–EE019/HI10–S991–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 18, 2004.

Reason Waived: Additional time was needed for the owner to resolve issues with the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Lake Senior Housing, Lake Township, OH, Project Number: 042–EE146/OH12–S021–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2004.

Reason Waived: Additional time was needed for HUD to issue the firm commitment.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Warwick House, Thousand Oaks, CA, Project Number: 122–HD152/CA16–Q021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2004.

Reason Waived: Additional time was needed for the owner to submit the plans to the city for the plan check review.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Mar Vista House, Oceanside, CA, Project Number: 129–HD027/CA33–Q021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2004.

Reason Waived: Additional time was needed for the City of Oceanside to complete the plan check review.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Community Hope VI, Roxbury, NJ, Project Number: 031–HD128/NJ39–Q011–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 19, 2004.

Reason Waived: Additional time was needed for the general contractor to obtain a permit and the owner to receive a water waiver from the township.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Apple Grove II Apartments, Lisbon, OH, Project Number: 042–HD103/OH12–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2004.

Reason Waived: Additional time was needed for the owner to obtain a release of a lien by the Department of Mental Health and a letter from the Internal Revenue Service (IRS).

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bausman Street Independent Living, Pittsburgh, PA, Project Number: 033–HD078/PA28–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 22, 2004.

Reason Waived: Additional time was needed for the owner to resolve site issues and secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Village at King Creek, Hendersonville, NC, Project Number: 053–HD205/NC19–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: VOA Sandusky, Sandusky, OH, Project Number: 042–HD110/OH12–Q021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Family Services of Western Pennsylvania IV, Vandergrift, PA, Project Number: 033–HD075/PA28–Q021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: Additional time was needed for the firm commitment to be issued.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Vermont Seniors, Los Angeles, CA, Project Number: 122–EE148/CA16–Q981–017.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Alleluia House, Anaheim, CA, Project Number: 143–HD015/CA43–Q021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 23, 2004.

Reason Waived: Additional time was needed for the owner to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Oak Knoll Villas, San Antonio, TX, Project Number: 115–EE065/TX59–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 26, 2004.

Reason Waived: Additional time was needed due to unresolved site issues and review of the new plans.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Hall Commons, Bridgeport, CT, Project Number: 017–EE063/CT26–S001–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 26, 2004.

Reason Waived: Additional time was needed for HUD to reprocess the firm commitment application due to zoning issues.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Huntleigh Crossing, San Antonio, TX, Project Number: 115–HD038/TX59–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Gruber Mills at Spring City, Spring City, PA, Project Number: 034–EE123/PA26–S021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for the owner to secure secondary financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Red Lake Apartments, Red Lake, MN, Project Number: 092–EE087/MN46–S021–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for the owner to prepare the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Balsam Lake Disabled Housing, Balsam Lake, WI, Project Number: 075–HD069/WI39–Q011–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Goremont, Tabor City, NC, Project Number: 053–HD203/NC19–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Washington Lane Section 811 Housing, Philadelphia, PA, Project Number: 034–HD070/PA26–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 29, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: University Court, Winston-Salem, NC, Project Number: 053–HD199/NC19–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 30, 2004.

Reason Waived: Additional time was needed for HUD to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Montgomery Community Homes I, Montgomery, AL, Project Number: 062–HD052/AL09–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 3, 2004.

Reason Waived: Additional time was needed for HUD to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Garden of Hope Inc., Birmingham, AL, Project Number: 062–EE057/AL06–S021–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: Additional time was needed for HUD to process the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: VOA Mora, Mora, MN, Project Number: 092–HD056/MN46–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: Additional time was needed for the project to be redesigned.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Montgomery Community Homes II, Montgomery, AL, Project Number: 062–HD051/AL09–Q0221–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: Additional time was needed for HUD to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. George Housing Corporation, Superior, WI, Project Number: 075–HD074/WI39–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Capital City Community Homes, Montgomery, AL, Project Number: 062–HD053/AL09–Q0221–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 6, 2004.

Reason Waived: Additional time was needed for HUD to review the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Wood Lane Homes I, Bowling Green, OH, Project Number: 042–HD109/OH12–Q0221–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: New Life Senior Resort, Christiansted, St. Croix, VI, Project Number: 056–EE047/VQ46–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: Additional time was needed for the owner to secure the 501(c)(3) tax exemption.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Scalibrini House, Torrance, CA, Project Number: 122–HD156/CA16–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: TBD, Cicero, NY, Project Number: 014–EE215/NY06–S021–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: Additional time was needed for the owner to locate another site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Rockland ARC Visions, Suffern, NY, Project Number: 012–HD109/NY36–Q011–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 17, 2004.

Reason Waived: Additional time was needed for HUD to review the secondary financing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Brook Street Apartments, Ilion, NY, Project Number: 014–HD110/NY06–Q021–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 20, 2004.

Reason Waived: Additional time was needed for the owner to select another general contractor.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Share X, Port Jefferson Station, NY, Project Number: 012–HD111/NY36–Q021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 21, 2004.

Reason Waived: Additional time was needed for the owner to a secure building permit.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Caribou House, Torrance, CA, Project Number: 122–HD157/CA16–Q021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Luther Village I of Dover, Dover, DE, Project Number: 032–EE012/DE26–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for the owner to submit the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Holy Angels Apartments Phase II, Bridgeton, MO, Project Number: 085–EE061/MO36–S002–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for the owner to obtain an easement from the land owner.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Senior Housing at Mahopac Hills, Mahopac, NY, Project Number: 012–EE262/NY36–S991–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for HUD to review the secondary financing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Walter Riley Davis Senior Complex, Milwaukee, WI, Project Number: 075–EE115/WI39–S021–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Victor Hernandez, Aguadilla, PR, Project Number: 056–EE045/RQ46–S021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for HUD to process the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Bishop Goedert Residence, Hines, IL, Project Number: 071–EE178/IL06–S021–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 22, 2004.

Reason Waived: Additional time was needed for the owner to resolve issues with the leasehold agreement for the site.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: University Senior Housing, Bronx, NY, Project Number: 012–EE320/NY36–S021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 6, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to prepare the closing documents, to assign a closing attorney and schedule the closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Rockland ARC Visions, Suffern, NY, Project Number: 012–HD109/NY36–Q011–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 8, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed due to site change.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Share X, Port Jefferson Station, NY, Project Number: 012–HD111/NY36–Q0221–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed for the owner to submit and for HUD to process the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Senior Housing at Mahopac Hills, Mahopac, NY, Project Number: 012–EE262/NY36–S991–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 3, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed for the owner to submit and for HUD process of the initial closing documents.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Rising Dove Senior Apartments, Paterson, NJ, Project Number: 031–EE059/NJ39–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 10, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed due to the lenghty local appoval process and owner revisition the plans.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Percy Abram Jr. Senior Housing, Oakland, CA, Project Number: 121–EE161/CA39–S021–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 9, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.165 and 24 CFR 891.100(d).

Project/Activity: Mercy Oaks Village, Redding, CA, Project Number: 136–EE068/CA30–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing. Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: December 9, 2004.

Reason Waived: The project is economically designed and comparable to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources. Also, additional time was needed to issue the firm commitment and prepare for initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.170.

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.170 provides, among other things, that to ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the owner in the form prescribed by HUD.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: It is in the best interest of the project to permit HUD's mortgage to be subordinate to the bank's Deed of Trust, provided HUD's Use Agreement and Regulatory Agreement are recorded prior to the recording of the bank's deed of trust. This waiver allows the mixed finance owner to prepare the project for closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.205.

Project/Activity: Robert H. Moore Senior Housing, Brooklyn, NY, Project Number: 012–EE324/NY36–S021–005.

Nature of Requirement: Section 891.205 requires Section 202 sponsor/owners to have tax-exempt status under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 13, 2004.

Reason Waived: The required tax-exemption ruling from IRS was not received in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Share X, Port Jefferson Station, NY, Project Number: 012–HD111/NY36–Q021–002.

Nature of Requirement: Section 891.310(b)(1) and (b)(2) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: The project consists of nine scattered sites for independent living for persons with chronic mental illness. One home will be made fully accessible, which will result in 11 percent of the total project meeting the accessibility requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.310(b)(1) and (b)(2).

Project/Activity: Venture Development 2002, New York City, NY, Project Number: 012–HD112/NY36–Q021–003.

Nature of Requirement: Section 891.310(b)(1) and (b)(2) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: October 28, 2004.

Reason Waived: The project consists of three single-family homes to be developed into group homes to serve eighteen persons with development disabilities. One home will be made fully accessible, which will result in 33 percent of the total project meeting the accessibility requirements.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.808(a).

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.808(a) requires a mixed finance owner to repay the loan from the non-profit general partner within 40 years at the Section 202 or Section 811 interest rate in effect on the date of the closing of the capital advance.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: It is in the program's best interest to allow the parties of the mixed-finance project to structure the transactions in the most appropriate way for the development, subject to compliance with legal requirements and HUD's review and approval.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.818(a)(2) and (4).

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.818(a)(2) requires the organizational documents of a mixed-finance owner and nonprofit organization to be submitted with the firm commitment applicanton. Section 891.818(a)(4) requires a balance sheet showing that the mixed-finance owner is adequately capitalized.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Processing the organizational documents of the mixed-finance owner and balance sheet at the initial closing for this mixed-finance project is consistent with the way the Department handles other real estate transactions.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.820(b).

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.820(b) requires a mixed-finance owner to submit a mixed-finance proposal along with the firm commitment application.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: Permitting the mixed-finance proposal to be submitted at initial closing is consistent with other real estate transactions handled in HUD.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

• *Regulation:* 24 CFR 891.825(a)(13) and (15).

Project/Activity: Genesee Housing, Seattle, WA, Project Number: 127–HD028/WA19–Q011–001.

Nature of Requirement: Section 891.825(a)(13) requires the sponsor to submit for HUD approval evidentiary materials consisting of the actual documents to support the statements and certifications in the firm commitment application/mixed-finance proposal and other required documents.

Granted by: John C. Weicher, Assistant Secretary for Housing—Federal Housing Commissioner.

Date Granted: November 1, 2004.

Reason Waived: It is in the best interest of the project to permit the mixed-finance owner to enter into the project rental assistance contract (PRAC) directly with HUD, and submit the evidentiary materials at initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone 202–708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: The Housing Authority of the City of Durham (NC013) Durham, NC.

Nature of Requirement: Section 902.33(c) establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 5, 2004.

Reason Waived: The PHA requested an extension of the due date because of three investigations by the Office of the Inspector General (OIG). The PHA was granted until November 30, 2004, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Hugo Housing Authority (OK044) Hugo, OK.

Nature of Requirement: Section 902.33(c) establishes certain reporting compliance dates/ unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 5, 2004.

Reason Waived: The PHA advised that fraud was discovered, and that as a result of the ensuing investigation, the PHA was unable to submit the audit by the due date. The PHA was granted until November 30, 2004, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: City of Dumas Housing Authority (AR043) Dumas, AR.

Nature of Requirement: Section 902.33(c) establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 5, 2004.

Reason Waived: The HA alleges an extension of the due date is needed because the Office of the Inspector General (OIG) took all records from the HA for an investigation. The HA has until January 31, 2005, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Housing Authority of the City of Dallas (TX009) Dallas, TX.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 5, 2004.

Reason Waived: The PHA alleges a new auditor was hired. The auditor questioned the previous audit, and closely looked at all transactions which required restating the beginning balances. During the audit process, the auditor was hospitalized, which put the PHA in the positions of submitting its data without assistance from the auditor. The PHA was granted until November 30, 2004, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Hamtramck Housing Commission (MI004) Hamtramk, MI.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the PHA fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 5, 2004.

Reason Waived: The PHA advised that HUD's Detroit Field Office was in possession of the PHA's records during the audit period. The PHA was granted until November 30, 2004, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Junction City Housing Authority (KS105) Junction City, KS.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 12, 2004.

Reason Waived: The HA alleges that the auditor encountered significant questioned costs and internal control matters that precluded the completion of the audit by the due date. The HA has until November 30, 2004, to submit its audit.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 902.33(c).

Project/Activity: Orlando Housing Authority (FL004) Orlando, FL.

Nature of Requirement: The regulation establishes certain reporting compliance dates. Unaudited financial statements are required to be submitted two months after the public housing agency (PHA) fiscal year end, and audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 22, 2004.

Reason Waived: The HA alleges an extension of the due date is needed because the Office of the Inspector General (OIG) is conducting an investigation. The HA has until March 31, 2005, to submit its audited financial data.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing,

Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Howard County Housing Commission (HCHC), Columbia, MD. HCHC requested approval of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disability.

Nature of Requirement: Section 982.505(d) allows a public housing agency (PHA) to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 14, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher holder to obtain an accessible unit so that she could maintain her health and live independently.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 982.505(d).

Project/Activity: Housing Authority of Washington County (HAWC), Portland, OR. HAWC requested an extension of a special exception payment standard that exceeds 120 percent of the fair market rent as a reasonable accommodation for a housing choice voucher holder's disabilities.

Nature of Requirement: Section 982.505(d) of HUD's regulations allows a PHA to approve a higher payment standard within the basic range for a family that includes a person with a disability as a reasonable accommodation in accordance with 24 CFR part 8.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 3, 2004.

Reason Waived: Approval of the waiver was granted to allow a disabled housing choice voucher holder to continue to reside in the two-bedroom townhouse that has enabled her to maintain her health and live independently.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. The HANO requested a waiver of competitive selection of owner proposals and waiting list requirements to permit it to attach project-based assistance (PBA) to units at the Florida and Guste Projects.

Nature of Requirement: Section 983.51(a), (b) and (c) require competitive selection of owner proposals in accordance with a PHA's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 15, 2004.

Reason Waived: Approval to waive competitive selection was granted based on the uniqueness of the circumstances confronting the HANO and the City of New Orleans low-income residents. Those circumstances include administrative receivership, lack of affordable housing in New Orleans and a complex ownership structure.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Housing Authority of New Orleans (HANO), New Orleans, LA. HANO requested a waiver of competitive selection of owner proposals and waiting list requirements to permit it to attach project-based assistance (PBA) to units at the St. Thomas Revitalization Project.

Nature of Requirement: Section 983.51(a), (b) and (c) of HUD's regulations requires competitive selection of owner proposals in accordance with a PHA's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 27, 2004.

Reason Waived: Approval to waive competitive selection was granted based on the uniqueness of the circumstances confronting HANO and the City of New Orleans low-income residents. Those circumstances include administrative receivership, lack of affordable housing in New Orleans and a complex ownership structure.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Housing Authority of the County of Santa Barbara (HACSB), Santa Barbara, CA. HACSB requested a waiver of competitive selection of owner proposals to permit it to attach PBA to 28 units at Central Plaza Apartments.

Nature of Requirement: Section 983.51(a), (b) and (c) requires competitive selection of owner proposals in accordance with a PHA's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 7, 2004.

Reason Waived: Approval to waive competitive selection was granted since the project underwent a competitive process for tax-exempt bonds without any prior commitment of PBA.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c).

Project/Activity: Melville Housing Authority (MHA), Melville, NJ. MHA requested a waiver of competitive selection of owner proposals to permit it to attach PBA to 29 units at Oakview Apartments.

Nature of Requirement: Section 983.51(a), (b) and (c) of HUD's regulations requires competitive selection of owner proposals in accordance with a PHA's HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 21, 2004.

Reason Waived: Approval to waive competitive selection was granted since the project underwent a comparable competitive process for tax-exempt bonds through the New Jersey Housing Mortgage Finance Agency without any prior commitment of PBA.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), 983.55 (a) and (d).

Project/Activity: Housing Authority of the City of Tacoma, Washington (THA), Tacoma, WA. THA requested a waiver of competitive selection of owner proposals and waiting list requirements to permit it to attach PBA to 35 units at the Salishan One and Salishan Two Projects.

Nature of Requirement: Sections 983.51(a), (b) and (c) and 983.55(a) and (d) require competitive selection of owner proposals in accordance with a public housing agency's (PHA), HUD-approved advertisement and unit selection policy.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 25, 2004.

Reason Waived: Approval to waive competitive selection was granted since the projects successfully competed for financing in Washington State. Each project received allocations of nine percent Low Income Housing Tax Credits through the competitive selection process of the Washington State Housing Finance Commission. In addition, the projects were competitively awarded funds through the Washington State Housing Trust Fund and the Federal Home Loan Bank Affordable Housing Program.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of

Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51(a), (b) and (c), 983.55 (a) and (d), and 983.203(a)(3).

Project/Activity: Housing Authority of the County of Marin (HACM), Marin County, CA. The HACM requested a waiver of competitive selection of owner proposals and waiting list requirements to permit it to attach PBA to 27 units at the Point Reyes Affordable Housing Project and 8 units at Hamilton Transitional Housing Phase II Project and maintain project-specific waiting lists for each project.

Nature of Requirement: Sections 983.51(a), (b) and (c) and 983.55 (a) and (d), requires competitive selection of owner proposals in accordance with a public housing agency's (PHA) HUD-approved advertisement and unit selection policy. Section 983.203(a)(3) states that a PHA may use the tenant-based waiting list, a merged waiting list, or a separate PBA waiting list for admission to the PBA program. If a PHA opts to have a separate PBA waiting list, it may use a single waiting list for all PBA projects or may use a separate PBA waiting list for an area not smaller than a county or municipality.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 18, 2004.

Reason Waived: Approval to waive competitive selection was granted since both projects underwent a competitive process for CDBG and HOME funds awarded by Marin County. On an annual basis Marin County receives between 75 and 100 requests for these funds, and awards are made to approximately half of the applicants. Approval to waive the waiting list requirements was granted since, although not implemented by regulation, section 8(o)(13)(J) of the United States Housing Act of 1937, as amended, allows, subject to a PHA's waiting list policies and selection preferences, the maintenance of separate waiting lists for PBA structures as long as all families on the PHA's waiting list for PBA can place their names on any of the separate PBA waiting lists.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.51, 24 CFR 983.203, and Section II subpart E of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: St. Louis Housing Authority (SLHA), St. Louis, MO. SLHA requested waivers of 24 CFR 983.51 regarding competitive selection of owner proposals, deconcentration requirements and waiting list requirements so that it could attach PBA to 26 units at Vaughn Elderly Redevelopment.

Nature of Requirement: Section 983.51 of HUD's regulations requires that the PHA adopt a written policy establishing competitive procedures for selection of owner proposals; Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent. Section 983.203(a)(3) of HUD's regulations states that if a PHA opts to have a separate PBA waiting list, it may use a single waiting list for all PBA projects or may use a separate PBA waiting list for an area not smaller than a county or municipality.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 9, 2004.

Reason Waived: Approval to waive competitive selection was granted since the developer's partner, McCormack Baron Salazar, Inc., was competitively selected by SLHA in accordance with 24 CFR 941.602(d)(1). Section 941.602(d)(1) is comparable to the competitive process requirements for PBA.

An exception to the deconcentration requirements was granted since the development is undertaken pursuant to a redevelopment plan, which will deconcentrate poverty in the area, as well as expand housing and economic opportunities. The redevelopment plan is being carried out in the immediate vicinity of the George L. Vaughn Residence at Murphy Park. The Vaughn Elderly Redevelopment, while undertaken separately from the George L. Vaughn Residence at Murphy Park redevelopment effort, is an integral component of such effort. Additionally, the City of St. Louis has determined that the redevelopment of Vaughn Elderly Redevelopment is consistent with the city's Consolidated Plan and the City has agreed to provide tax abatement for the property and has designated Vaughn Elderly Redevelopment as a redevelopment area.

In light of the expansion of housing and economic opportunities and the revitalization efforts taking place, it was determined that the goals involved in this project are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Approval of the waiver request for § 983.203(a)(3) was granted so that the owner can maintain, and select applicants from, a site-based waiting list. SLHA and the owner have agreed that the owner's site-based waiting list for public housing units shall be deemed SLHA's separate waiting list for PBA units and that the owner will select tenants for PBA from this site-based waiting list.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 983.203, and Section II subpart E of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Housing Authority of the City of New Haven (HACNH), New Haven, CT. The HACNH requested an exception to the initial guidance to allow the attachment of PBA to units at the Quinnipiac Terrace project. HACNH also requested a waiver of 24 CFR Section 983.203(a)(3) to allow HACNH to maintain a site-specific waiting list for the project.

Nature of Requirement: Section 983.203(a)(3) of HUD's regulations states that a PHA may use the tenant-based waiting list, a merged waiting list, or a separate PBA waiting list for admission to the PBA program. If a PHA opts to have a separate PBA waiting list, it may use a single waiting list for all PBA projects or may use a separate PBA waiting list for an area not smaller than a county or municipality.

Section II subpart E of the Initial Guidance requires that in order to meet the statutory goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 28, 2004.

Reason Waived: An exception to the deconcentration requirements was granted since the neighborhood is undergoing significant revitalization. The Revitalization plans for the project included the replacement of 256 public housing units with 114 public housing units—resulting in a significant decrease in assisted housing units—and the addition of 19 market-rate homeownership units. Section 983.203(a)(3) of HUD's regulations was waived since section 8(o)(13)(J) of the United States Housing Act of 1937, as amended, allows, subject to a PHA's waiting list policies and selection preferences, the maintenance of separate waiting lists for PBA structures as long as all families on the PHA's waiting list for PBA can place their names on any of the separate PBA waiting lists.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 985.3.

Project/Activity: Hale County Housing Authority (TX537) Plainview, TX.

Nature of Requirement: Section 985.3 establishes certain reporting compliance dates. Audited financial statements will be required no later than nine months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 9, 2004.

Reason Waived: The PHA alleges that records had to be reconstructed and verified after the former executive director was relieved of his duties for misconduct. The PHA was granted until December 31, 2004, to submit its audit.

Contact: Judy Wojciechowski, Program Manager, NASS, Real Estate Assessment

Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410, telephone (202) 475–7907.

• *Regulation:* 24 CFR 985.101(a)

Project/Activity: City of Pensacola Housing Authority (CPHA), Pensacola, FL. CPHA requested a waiver regarding the certification requirement under the Section Eight Management Assessment Program (SEMAP).

Nature of Requirement: Section 985.101 of HUD's regulations requires a PHA to submit the required SEMAP certification form within 60 calendar days after the end of the PHA's fiscal year.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 20, 2004.

Reason Waived: Approval of the waiver was granted due to the PHA having suffered extensive damage to its tenant files, internal computer systems and its office spaces resulting from Hurricane Ivan.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* 24 CFR 990.107(f) and 990.109

Project/Activity: Jackson, OH, Metropolitan Housing Authority. A request was made to permit the Jackson Metropolitan Housing Authority to benefit from energy performance contracting for developments that have resident-paid utilities. The Jackson Metropolitan Housing Authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies only to PHA-paid utilities. The Jackson Metropolitan Housing Authority has resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: November 12, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Jackson Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver permits the Authority to exclude from its Operating Fund calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Peggy Mangum, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center. Department of Housing and Urban Development, 550 12th St., SW., Washington, DC 20024, telephone: (202) 475–8778.

• *Regulation:* 24 CFR 990.107(f) and 990.109

Project/Activity: Housing Authority of the City of New Britain, CT. A request was made to permit the Housing Authority of the City of New Britain to benefit from energy performance contracting for developments that have resident-paid utilities. The Housing Authority of the City of New Britain estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies only to PHA-paid utilities. The Housing Authority of the City of New Britain has resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 10, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Jackson Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver permits the Authority to exclude from its Operating Fund calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Peggy Mangum, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center. Department of Housing and Urban Development, 550 12th St., SW., Washington, DC 20024, telephone: (202) 475–8778.

• *Regulation:* 24 CFR 990.107(f) and 990.109.

Project/Activity: Jefferson, OH, Metropolitan Housing Authority. A request was made to permit the Jefferson Metropolitan Housing Authority to benefit from energy performance contracting for developments that have resident-paid utilities. The Jefferson Metropolitan Housing Authority estimates that it could increase energy savings substantially if it were able to undertake energy performance contracting for its resident-paid utilities.

Nature of Requirement: Under 24 CFR part 990, Operating Fund Formula energy conservation incentive that relates to energy performance contracting currently applies only to PHA-paid utilities. The Jefferson Metropolitan Housing Authority has resident-paid utilities.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 10, 2004.

Reason Waived: In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with resident-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Jackson Metropolitan Housing Authority requested a waiver based on the same approved methodology. The waiver permits the Authority to exclude from its Operating Fund calculation of rental income the increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

Contact: Peggy Mangum, Public Housing Financial Management Division, Office of Public and Indian Housing, Real Estate Assessment Center. Department of Housing and Urban Development, 550 12th St., SW., Washington, DC 20024, telephone: (202) 475–8778.

• *Regulation.* Section II subpart E of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Connecticut Department of Social Services (DSS), Hartford, CT. DSS requested an exception to the initial guidance to allow the attachment of PBA to units in the Fair Haven neighborhood where the poverty rate is greater than 20 percent.

Nature of Requirement: Section II subpart E of the Initial Guidance requires that in order to meet the statutory goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 22, 2004.

Reason Waived: The census tract that encompasses the Fair Haven neighborhood has been designated a HUD Empowerment Zone. The purpose of establishing Empowerment Zones was to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. These goals are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** notice,

Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: City of Phoenix Housing Authority (CPHA), Phoenix, AZ. The CPHA requested a waiver of deconcentration requirements to permit it to attach PBA to 48 units at Sunrise Vista Apartments, which is located in census tract 1161 that has a poverty rate of 53 percent.

Nature of Requirement: Section II subpart E of the initial guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 3, 2004.

Reason Waived: An exception to the deconcentration requirements was granted to Sunrise Vista Apartments since it is located in the South Phoenix Village Development Area that is also designated as a Neighborhood Initiative Area (NIA). The mission of a NIA is to improve the physical, social and economic health of a neighborhood by focusing resources in targeted areas. The project is also located in a HUD-designated Enterprise Community. The purpose of establishing enterprise communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. The goals of a NIA and enterprise community are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone 202–708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Registe**r notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Rochester Housing Authority (RHA), Rochester, NY. The RHA requested a waiver of deconcentration requirements to permit it to attach PBA to two units at the Ibero-American Development Corporation Project, which is located in census tract 52 that has a poverty rate of 46.2 percent.

Nature of Requirement: Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: December 3, 2004.

Reason Waived: An exception to the deconcentration requirements was granted since the project is located in the City of Rochester's HUD-designated Renewal Community. The purpose of establishing renewal communities is to open new businesses, and create jobs, housing, and new educational and healthcare opportunities for thousands of Americans. The goals of a renewal community are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

• *Regulation:* Section II subpart E of the January 16, 2001, **Federal Register** notice, Revisions to PHA Project-Based Assistance (PBA) Program; Initial Guidance (Initial Guidance).

Project/Activity: Albany Housing Authority (AHA), Albany, NY. The AHA requested a waiver of deconcentration requirements to permit it to attach PBA to up to 200 units at South Mall Towers, which is located in census tract 11 that has a poverty rate of 37 percent.

Nature of Requirement: Section II subpart E of the Initial Guidance requires that in order to meet the Department's goal of deconcentration and expanding housing and economic opportunities, the projects must be in census tracts with poverty rates of less than 20 percent.

Granted By: Michael Liu, Assistant Secretary for Public and Indian Housing.

Date Granted: October 12, 2004.

Reason Waived: An exception to the deconcentration requirements was granted since the neighborhood is undergoing significant revitalization supported by public and private investment of over $58 million. Some of these revitalization projects include: South Pearl Street Reconstruction that will house future retail and business establishments; a new convention center that will also provide job opportunities; the rehabilitation of nine market-rate townhouses on South Pearl Street; the rehabilitation of the historic Lincoln Park pool and bath house; and rehabilitation of the Cathedral of the Immaculate Conception. The significant investment into the neighborhood of South Mall Towers and their related activities that will create jobs are consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

Contact: Alfred C. Jurison, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone 202–708–0477.

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April 8, 2005

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI78

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating no critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus jaegerianus* (Lane Mountain milk-vetch). In our April 6, 2004 proposed rule, we identified 29,522 acres (ac) (11,947 hectares (ha)) of habitat essential for the conservation of *A. jaegerianus* located in the Mojave Desert in San Bernardino County, California. However, as a result of our evaluation of the relationship of essential habitat to sections 3(5)(A), 4(a)(3), and 4(b)(2) of the Act, we designate a total of zero acres (0 ac) (zero hectares (0 ha)).

DATES: This rule becomes effective on June 7, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. The final rule, economic analysis, and map of proposed critical habitat are also available via the Internet at *http://ventura.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than by biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 470 species, or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs results in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

For background information on the biology of *Astragalus jaegerianus,* and a description of previous Federal actions, including our determination that designating critical habitat for this species is prudent, please see our April 6, 2004, proposed rule (69 FR 18018). On November 15, 2001, our decision not to designate critical habitat for *A. jaegerianus* and seven other plant and wildlife species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Norton* (Case No. 01–CV–2101–IEG (S.D.Cal.)). On July 1, 2002, the court ordered the Service to reconsider its not prudent

determination and if prudent, to propose critical habitat for the species by September 15, 2003, and, if prudent, to issue a final critical habitat designation no later than September 15, 2004. However, prior to completing the proposed rule, the Service exhausted the funding appropriated by Congress for work on critical habitat designations in 2003. On September 8, 2003, the court issued an order extending the publication date of the proposed critical habitat designation for *A. jaegerianus* to April 1, 2004, and the final designation to April 1, 2005. In light of *Natural Resources Defense Council* v. *U.S. Department of the Interior,* 113 F.3d 1121 (9th Cir. 1997), and the diminished threat of overcollection, the Service reconsidered its decision and determined that it was prudent to designate critical habitat for the species. On April 6, 2004, we published a proposed critical habitat designation (69 FR 18018) that included 29,522 ac (11,947 ha). On December 8, 2004, we published a notice of availability of the draft economic analysis for the designation of critical habitat and reopened the comment period for the proposed rule and draft economic analysis. This second comment period closed on January 7, 2005.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Astragalus jaegerianus* in the proposed rule published on April 6, 2004 (69 FR 18018). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. During the comment period that opened on April 6, 2004, and closed on May 21, 2004, we received 11 comment letters directly addressing the proposed critical habitat designation: 2 from peer reviewers, 4 from Federal agencies, 1 from a local agency, and 4 from organizations or individuals. During the comment period that opened on December 8, 2004, and closed on January 7, 2005, we received three comment letters addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, two were from Federal agencies, and one was from an organization. Four of the six total comment letters from Federal agencies were from the Department of Defense (DOD). Three commenters supported the designation of critical habitat for *Astragalus jaegerianus,* three were neutral, and four opposed the designation. Two letters included comments or information, but did not express support or opposition to the proposed critical habitat designation. Comments received were grouped by source (peer review, Federal agency, local agency, and public comments) and are addressed in the following summary and incorporated into the final rule as appropriate. We received one request for a public hearing, but this request was later retracted by the requestor.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from Sustainable Ecosystems Institute and three other knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, or conservation biology principles. We received responses from two of the four peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments

Comment 1: One peer reviewer appreciated our efforts to capture realistic functional habitats through the inclusion of appropriate buffers in the critical habitat designation, but was concerned that there may not be sufficient connectivity between the three units to allow for genetic exchange, and suggested that the intervening areas should be evaluated on a regular basis to ensure the populations do not become isolated.

Our response: Three critical habitat units were proposed for the four known populations of *Astragalus jaegerianus* (69 FR 18018). The Goldstone and Montana Mine-Brinkman Wash populations were proposed as one critical habitat unit, preserving existing genetic connectivity between those two populations. We believe we had sufficient reason to propose contiguous critical habitat between the Goldstone and Montana Mine-Brinkman Wash populations because the 0.5-mile (mi) (0.8 kilometers (km)) distance between them could easily be traversed by pollinators and seed dispersers (the two mechanisms for effecting genetic exchange between populations). However, because of the greater distance between the Brinkman Wash–Montana Mine population and the Paradise population (over 1.0 mi (1.6 km.)), and the Paradise population and Coolgardie population (3.0 mi (5 km)), we have no reasonable cause to believe that genetic exchange occurs between these populations on a regular basis. The intervening habitat between the Brinkman Wash-Montana Mine, Paradise, and Coolgardie populations does not contain the requisite primary constituent elements (PCEs, see Primary Constituent Elements section), nor is it suitable for the survival of *A. jaegerianus.* We believe that these populations of *A. jaegerianus* most likely are reproductively isolated. In addition, the distances between populations are greater than would be reasonably likely to support genetic exchange. All of these factors led us to believe these areas between units or populations are not essential to the conservation of the species and therefore we did not through the critical habitat process attempt to establish connectivity between these other populations.

Comment 2: One peer reviewer commented that stigmatic fouling (a form of contamination that occurs to flowers, and which could decrease the ability to produce viable seed) by dust generated from vehicle traffic has been observed at a Nevada test site. At this site, dust traveled considerable distances to rare plant population sites. The peer reviewer recommended that dust generated from the DOD's training activities could impact the reproduction of *Astragalus jaegerianus,* and that, where necessary, buffers should be expanded on the windward sides of the critical habitat units to reduce this impact.

Our response: We have contracted with the Biological Resources Division of the United States Geologic Survey (USGS) to study the potential effects of dust on the growth (as measured by leaf length) and rate of photosynthesis of *Astragalus jaegerianus.* Preliminary results indicate that applications of dust did not affect leaf growth, and photosynthesis increased; however, shoot length decreased (Wijayratne et al. 2004). Researchers hypothesize that heavily dusted plants compensate by putting more effort into new leaves and reducing the availability of resources for shoot growth. The potential effects of dust on stigmatic fouling have not been studied for this species nor do we have specific information concerning other dust effects on *A. jaegerianus* or its pollinators. Under the ESA, we base our critical habitat determinations on the best available science. The proposed units reflected the best available information on the effects of dust. Due to the lack of information supporting the

need for increased buffers on the windward side, we did not expand the critical habitat units.

Comment 3: The Service has not used the basic tenets of conservation biology in relation to minimizing fragmentation and maximizing connectivity between the proposed critical habitat units. Connectivity among occurrences, minimization or avoidance of fragmentation, and maximization of reserve size are all fundamental principles of basic reserve design that should be applied to delineating critical habitat boundaries. The Goldstone-Brinkman unit and the Coolgardie unit are particularly problematic because of their increased edge-to-area ratios, including the''donut hole'' (*i.e.*, the nonessential area encompassed wholly within the Coolgardie unit) in the Coolgardie unit. Maintaining corridors to connect critical habitat units is particularly important to provide opportunities for dispersal of seed and for pollinators.

Our response: We agree that maintaining connectivity between *Astragalus jaegerianus* populations is important when there is some reason to believe that genetic exchange is occurring through seed dispersal and cross-pollination. We intentionally connected the Goldstone and Montana-Brinkman populations because a number of biologically based criteria (including pollinator flight distances, seed disperser travel distances, and the presence of primary constituent elements (PCEs)) were met, indicating that the likelihood of genetic exchange between these two populations was high. Based on available information, however, we do not believe that genetic exchange is occurring between the Montana-Brinkman and Paradise populations, or the Paradise and Coolgardie populations, with any frequency. The distance between the former two populations is 1.4 mi (2.3 km), and the distance between the latter two populations is 3 mi (5 km); this distance is greater than that which can be traversed by the most likely seed-dispersing animals and by pollinators of *A. jaegerianus.* Moreover, unlike the corridor we included between the Goldstone and Montana-Brinkman populations, the intervening habitat between these other two sets of populations contains topographic features, elevations, and vegetation types that do not contain the PCEs for *A. jaegerianus* (See Primary Constituent Elements section). As discussed above in response to comment 1, the Service does not consider this intervening habitat to be essential to the conservation of the species.

We agree that maintaining a low edge-to-area ratio is generally an important criterion in reserve design; however, the designation of critical habitat does not establish a preserve or other conservation area. Ideally, those responsible for planning a reserve (e.g., the land manager) would take into consideration critical habitat as well as other criteria (such as edge-to-area ratio and land uses adjacent to the proposed reserve) in their planning process. In the specific case of the Coolgardie unit, although the ''donut hole'' technically increases the edge-to-area ratio considerably, the current and future uses of lands in the donut hole most likely would not have substantial edge effects on those lands within adjacent critical habitat. This is because these lands are primarily Bureau of Land Management (Bureau) lands that are managed under the ''limited'' and ''moderate'' use categories; among other restrictions, vehicle travel is restricted to approved routes of travel. Mining claims used for recreational purposes occur within the donut hole as well as within the proposed critical habitat boundaries on the Coolgardie unit. Although we do not believe them to be substantial, we recommend that the Bureau undertake an assessment of potential impacts of recreational mining on *Astragalus jaegerianus* regardless of critical habitat designation.

Comment 4: Since the purpose of critical habitat designation is to facilitate recovery of the species, not merely to ensure the survival of individuals or populations (as per recent court cases) designating critical habitat between the proposed critical habitat units would not only reduce fragmentation but also create areas for recovery.

Our response: The Goldstone-Brinkman unit encompasses both the Goldstone and Montana-Brinkman populations and the intervening habitat between these two populations. These two populations and the intervening habitat were proposed to be designated as one unit because the habitat includes PCEs, is suitable for *Astragalus jaegerianus,* and likely supports genetic exchange and serves as a dispersal corridor. This area was considered essential for conservation.

The best information available to us at this time indicates that the rest of the habitat between the proposed critical habitat units is not suitable for *A. jaegerianus* nor is it essential to its conservation. These areas did not contain any PCEs and were not proposed to be designated as critical habitat. For additional discussion, please refer to comment 1 above.

Comment 5: Proposed critical habitat on Fort Irwin should not be excluded on the basis of the DOD completing an Integrated Natural Resources Management Plan (INRMP). The failure to recognize (as the result of an exclusion) that a large portion of the habitat essential to maintaining *Astragalus jaegerianus* occurs on Fort Irwin would likely result in the long-term extinction of the species.

Our response: Because Fort Irwin's INRMP is still in draft form, the statutory exemption for DOD lands covered by an approved INRMP is not applicable to Fort Irwin lands. Section 4(a)(3)(B) can not be applied at this time. However, in this final rule, all DOD lands at Fort Irwin are being excluded under Section 4(b)(2) for national security. Furthermore, Fort Irwin has undergone a Section 7 consultation in association with its expansion. Among the commitments analyzed in the Biological Opinion are the preservation of two milk-vetch populations in conservation areas set aside for milk-vetch preservation, and limiting military training activities in other areas to preserve milk-vetch plants and habitat. The Service's Biological Opinion concluded that activities associated with base expansion will not jeopardize the continued existence of *Astragalus jaegerianus* (Service 2004). For more information see comment 6 and the analysis underlying this exclusion in Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act.

Federal Agency Comments

Comment 6: The DOD has requested that its lands at Fort Irwin be excluded from final critical habitat designation based on an exclusion under section 4(a)(3)(B) of the Endangered Species Act (Act), as amended. Section 4 of the Act was amended through the National Defense Authorization Act for 2004 (Pub. L. 108–136). Section 4(a)(3)(B) of the Act states the Secretary shall not designate as critical habitat any lands controlled by DOD that are subject to an INRMP, if the Secretary determines that such a plan provides a benefit to the species for which critical habitat is proposed. DOD states that Fort Irwin's INRMP and attendant Endangered Species Management Plan (ESMP) meet the three criteria that the Service uses to evaluate such plans (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act). First, the INRMP provides a conservation benefit to the species because over 8,000 ac (3,237 ha) will be placed under conservation status with training and access restriction. Second, funding is

assured for conservation-related projects in the INRMP because they are given a ''must-fund'' priority within their program requirements (Hoefert, in litt. 2004). Third, the INRMP provides assurances that the conservation strategies will be effective by providing for periodic monitoring and revisions to management (adaptive management) as necessary. Additionally, the INRMP will be reviewed annually with the Service and other signatory parties to ensure the implementation and effectiveness of the conservation actions taken.

Our response: Section 4(a)(3) of the Act prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is being proposed. The current draft INRMP provides conservation measures and monitoring, which allows for an adaptive management strategy to be implemented. Because Fort Irwin's INRMP is still in draft form, however, Section 4(a)(3)(B) can not be applied at this time. However, in this final rule, all DOD lands at Fort Irwin are being excluded under 4(b)(2) based on potential impacts to national security and military readiness within the training area. For more information, see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act.

The Service has been working with the DOD on the development of the INRMP, particularly that portion which addresses *Astragalus jaegerianus.* We reviewed an initial draft in 2002; in late 2004 we reviewed several versions of the draft INRMP. Progress on the INRMP is continuing in early 2005; however, due to the lengthy process to secure review and approval from various entities (in addition to the Service, the INRMP is required to have review and approval from the California Department of Fish and Game (CDFG)), final approvals of the INRMP will likely not be in place by the time of this final rule. Once the entire INRMP is completed, the Service will review it pursuant to our guidelines for Sikes Act documents and consult with the DOD pursuant to section 7(a)(2) of the Act prior to final approval and signature.

The service previously consulted with DOD with respect to its proposal to expand Fort Irwin (Service 2004). In this earlier consultation, we analyzed the effects of the DOD's proposed additional training activities and proposed conservation measures on *Astragalus jaegerianus.* Of the 11,378 ac (4,605 ha) of occupied *A. jaegerianus* habitat on Fort Irwin, approximately 4,600 ac (1,862 ha), or 40 percent of this habitat will be subject to high and medium intensity levels of use for military training; approximately 5,000 ac (2023 ha), or 43 percent, will be placed in the two conservation areas and approximately 1,870 ac (757 ha), or 17 percent, will be placed in the ''no-dig'' zone. DOD has proposed to establish the Goldstone Conservation Area (2,470 ac (1,000 ha)) and the East Paradise Valley Conservation Area (4,302 ac (1741 ha)). No mechanized training or ground-disturbing activities will be permitted within these areas; vehicle use will be restricted to existing roads, and the boundaries of the areas will be marked. In addition, a ''no-dig'' zone, a portion of which (approximately 2,000 ac (809 ha)) supports *A. jaegerianus,* will be restricted to certain uses. Digging and the establishment of tactical assembly areas and brigade support areas would be prohibited. We anticipate that, with the possible exception of road and communication site development, most of this area will remain undisturbed. Consequently, with few exceptions, we expect the Lane Mountain milk-vetch in the ''no-dig'' zone to persist with little disturbance. DOD is also proposing to assist the Bureau with the acquisition of private lands within the proposed Coolgardie Area of Critical Environmental Concern (ACEC) that is also being established for the conservation of *A. jaegerianus,* and to implement an education program for military personnel concerning the importance of minimizing disturbance to *A. jaegerianus* and its habitat. These conservation measures, as assessed in our biological opinion, have been carried into Fort Irwin's INRMP in total.

The military training activities will ultimately result in the loss of up to 4,600 ac; this amount comprises approximately 21.5 percent of the total known habitat for this species. Some areas supporting *A. jaegerianus* within the training areas are inaccessible to vehicles and thus may not be used in a way that impacts the plants. However, due to the large extent of the expansion area and the lack of more detailed information concerning the location of *A. jaegerianus* plants, topographic features such as rock outcrops throughout this area, and the precise intensity and type of use by the Army, we were unable to analyze effects at that level that would allow us to identify and quantify the lands where *A. jaegerianus* may not be affected by training. We note that, to ensure we would not overestimate the contribution of the *A. jaegerianus* in these areas to the conservation of the species, our analysis was based on the assumption of all of the plants in these areas being lost. With the proposed conservation measures, 78.5 percent of the total known habitat for the species will be placed under some form of conservation management—either in the two conservation areas or the ''no-dig'' zone on Fort Irwin lands, or in the proposed ACEC on Bureau lands. Based on the information available at this time, although there would be loss of *A. jaegerianus* plants and habitat due to military training activities, the remaining portions of the occurrences support dense aggregations of plants and are of sufficient size for the ecosystems that *A. jaegerianus* depends on to persist (Service 2004).

Comment 7: The DOD requested that its lands at Fort Irwin be excluded from final critical habitat designation based on an exclusion under section 4(b)(2) of the Endangered Species Act (Act), as amended. This section of the Act states that the Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned. DOD cites that ''[w]e may exclude an area from designated critical habitat based on economic impacts, the effect on national security, or other relevant impacts.'' (Hoefert, in litt. 2004) The DOD stated that the National Training Center (NTC) at Fort Irwin is essential to national security in that it provides the only military installation suited for live maneuver training of heavy brigade and battalion task forces. Should restrictions to maneuver training result from the designation of critical habitat, such as reducing flexibility in use of training lands, closing of areas, or training delays to allow for reinitiation of consultation for critical habitat, it will have a direct impact on the Army's training cycle, unit readiness, and national security.

Our response: In this final rule, we are excluding all DOD lands at Fort Irwin under section 4(b)(2) due to national security (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act). Section 4(b)(2) of the Act states that critical habitat shall be designated and revised on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any

other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if we determine, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships and national security. In this case, as discussed more fully below, we have determined in the 4(b)(2) analysis that the DOD lands on Fort Irwin may be excluded from the critical habitat designation.

Comment 8: DOD commented that the only potential benefit of designation of critical habitat on Fort Irwin lands would be the prohibition of destruction or adverse modification of critical habitat under section 7 of the Act. However, since all proposed lands are occupied, DOD states that any proposed action that would result in destruction or adverse modification would also result in jeopardy. DOD commented that since they have already consulted on the land expansion and received a nonjeopardy determination, the proposed training activities should not result in the extinction of the species.

Our response: We have evaluated the benefits of designation in our 4(b)(2) analysis within this document.

Comment 9: The creation of artificially large buffer areas around the *Astragalus jaegerianus* populations and their inclusion as critical habitat has no scientific basis. The logic of including every known plant and the associated 100-to-200-meter (m) (328-to-656-feet (ft)) buffer is questionable, especially in light of the fact that the current known amount of *A. jaegerianus* is over 20 times larger than the amount that was believed to exist when it was listed as endangered.

Our response: The numbers of individuals and the range of *Astragalus jaegerianus* are now known to be larger than they were at the time the species was listed (October 6, 1998, 63 FR 53596). However, we also know more now about the life history of the species and about the extent of the threat its habitat faces from proposed military activities. Rundel *et al.* (2004) tracked over 200 *A. jaegerianus* at 5 locations between 1999 and 2004 and found that less than 15 percent of them had survived over the 5-year time period. This research indicates that successful recruitment (addition of individuals to a population by reproduction) is correlated with, among other factors, annual precipitation of at least 15 centimeters (cm) (5.9 inches (in)). Annual precipitation between 12 cm (4.7 in) and 15 cm (5.9 in) may represent years when established individuals continue to persist; annual precipitation between 7 (2.8 in) and 12 cm (4.7 in) may be years when some individuals die due to water stress; and annual precipitation of less than 7 cm (2.8 in) may be years when many individuals die due to water stress or remain dormant. The level of annual precipitation needed for recruitment (more than 15 cm (5.9 in)) has not occurred since 1998 and it appears that the numbers of individuals of *A. jaegerianus* have been in decline since that time. If the length of time between years favorable for recruitment is longer than the average lifespan of individuals, then the species will be dependent on the seedbank to re-establish above-ground populations. Therefore, it is important to acknowledge that the numbers of individuals of *A. jaegerianus* fluctuate over time, not only from year to year, but from one decade to the next, depending on long-term climatic trends, and that maintaining habitat of suitable quality is important to maximize the reproductive potential of the species during climatically favorable years.

We did not include ''artificially large buffer areas'' around the *Astragalus jaegerianus* populations in our proposed designation, and in fact we did not include buffer areas. As explained in our proposed rule in the Methods section, any lands additional to those occupied by plants include the granitic soils and plant communities (primary constituent elements) that support *A. jaegerianus* and are well within the distance that can be traversed by pollinators and seed dispersers. We expect these areas have seed banks. Moreover, additional lands were not included if the topography was too steep or the elevation was too high to support additional *A. jaegerianus* individuals. We therefore believe our approach for including these additional lands in the proposed designation was scientifically sound.

Comment 10: The National Aeronautics and Space Administration (NASA) commented that the *Astragalus jaegerianus* individuals on lands they lease from the DOD in what is known as the Venus Research and Development site do not significantly contribute to the overall milk-vetch population, and therefore should not be considered in the critical habitat designation.

Our response: Because this NASA area is a lease holding within DOD's Ft. Irwin, we are excluding this area under 4(b)(2) for national security. NASA has indicated that this area is vital to their future space exploration efforts and that critical habitat in this area will severely limit their ability to develop cutting edge space communications vital to extended missions to the Moon and planet Mars. Furthermore, about 600 of 996 acres (403 ha) of DOD lands DOD leased to NASA, are covered under DOD's Goldstone Conservation Area. The Goldstone population of the milk-vetch supports approximately 500 plants. As discussed in comment 6, these areas are managed by DOD for the conservation of the plant (where there will be no mechanized training or ground-disturbing activities permitted within these areas), further supporting our exclusion under section 4(b)(2) of the Act.

We have no information suggesting that these individuals contribute any less to the population than other individuals, and we believe we have biological basis for considering them to be essential. However, we have excluded this area for other reasons (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act).

Comment 11: NASA comments that its research and development projects are critical to future space exploration efforts and the additional regulatory constraints imposed by critical habitat in the Venus site will severely limit their ability to develop cutting edge space communications vital to extended missions to the moon and the planet Mars.

Our response: Because the amount of habitat and number of individuals of *A. jaegerianus* that occur on NASA-leased lands is less that one percent of the total extent of the species, we do not believe that critical habitat would result in regulatory constraints to the extent that it would severely limit their ability to carry out their research and development programs. However, we have excluded this area for other reasons (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and Section 4(b)(2) of the Act). See comment 10 for additional information.

Comment 12: The Bureau of Land Management requested that we reconsider whether designation of critical habitat on Bureau-administered lands in the Paradise and Coolgardie areas is necessary or appropriate. The Bureau stated that we are authorized by the Act [sections 4(b)(2) and 3(5)(A)] to exclude areas covered by adequate management plans or agreements (including HCPs), and that provide for

adequate protection of the primary constituent elements of such habitat. The final Environmental Impact Statement (EIS) of the West Mojave Plan (WMP) was published on April 1, 2005 and includes an amendment to the Bureau's California Desert Conservation Area Plan and makes reference to future development of an HCP; the companion HCP for non-Federal lands within the planning area is currently under development. The WMP includes provisions for establishing two new conservation areas for *Astragalus jaegerianus* (Coolgardie Mesa and West Paradise ACECs) and a set of management actions that are applicable to these areas that will contribute to the conservation of *A. jaegerianus.*

Our response: The Service has been working with the Bureau and other participating agencies in the development of the WMP over the last decade. Although the final EIS for the WMP has been published, the WMP is not final because the Record of Decision (ROD) has not yet been signed; we expect the ROD to be signed in the near future. We have provided comments to the Bureau on its proposed measures to conserve *Astragalus jaegerianus* on early versions of the draft plan and believe that these measures will provide a conservation benefit to the species. We have applied the three criteria by which we evaluate the effectiveness of conservation measures included in management plans (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and Section 4(b)(2) of the Act) and have made a finding that conservation measures contained in the WMP for *A. jaegerianus* will provide for adequate protection of the species and its habitat; therefore, special management and protections would not be required. However, to the extent that these specific areas meet the definition of critical habitat pursuant to section 3(5)(A)(i)(II) of the Act, we are excluding under section 4(b)(2) the entire Coolgardie unit and the portion of the Paradise unit that is on Bureau lands from final critical habitat designation. For our justification, please see, Relationship of Critical Habitat to Lands Managed by the Bureau of Land Management.

Local Agency Comments

Comment 13: The County of San Bernardino questions whether additional populations of *Astragalus jaegerianus* might be located in the future since the DOD-sponsored surveys focused on Fort Irwin lands. If additional populations are found in the future, the County is concerned as to whether these lands would also be included in critical habitat.

Our response: The DOD-sponsored surveys included a reconnaissance phase in which additional sites up to 30 miles away from known *Astragalus jaegerianus* populations that had suitable substrate, elevation, and plant communities were also checked (Charis Corporation 2001). Although it is possible that other populations may be located in the future, the reconnaissance surveys lead us to believe that this is unlikely. We are required to use the best information available at the time a critical habitat designation is proposed; if other populations are located in the future on nondesignated lands, those lands could be designated as critical habitat only through another regulatory process. However, if other lands are found that support *A. jaegerianus* populations but critical habitat is not designated on these lands, this lack of designation does not signify that these lands are any less important to the conservation and recovery of the species.

Comment 14: Critical habitat should not be used to cancel or impede the determination the Service has already made in its biological opinion that the expansion of training at Fort Irwin will not cause jeopardy to the species.

Our response: We have excluded all DOD lands at Fort Irwin on the basis of 4(b)(2) of the Act. If we had designated critical habitat for *Astragalus jaegerianus* on Fort Irwin lands, any re-initiation of formal consultation on its critical habitat would be conducted under section 7(a)(2) of the Act.

Comment 15: What kind of assessment has there been of the effects that the potentially impacting activities discussed under the Effects of Critical Habitat Designation in the proposed rule (such as grazing, fire management, vehicle disturbance, and mining activities) have actually had on the population size and distribution of the species? What effects have historic mining activities had on the species beyond the boundary of actual operations?

Our response: Quantitative monitoring to correlate the nature and extent of impacts with population parameters has not yet been initiated; DOD has proposed to initiate such monitoring as a part of its INRMP and ESMP. Nevertheless, there is an abundance of literature that discusses impacts of various activities (such as grazing, fire management, vehicle disturbance, and mining) on desert habitats which, in general, are less resilient to such impacts and take longer to recover than more mesic habitats (see Webb and Wishire 1983; Latting and Rowlands 1995; U.S. Geologic Survey, 2004 and DOD Integrated Training Area Management (ITAM) workshop proceedings (*http://srp.army.mil.public/workshop*)). Impacts that affect the plant community within which *Astragalus jaegerianus* occurs will also impact *A. jaegerianus*.

The commenter notes that ''much of the area has undergone historic mining exploration and activity'' and questions whether this really had an effect on the species. Although mining historically occurred over much of the area included in the proposed Coolgardie critical habitat unit, the activity typically consisted of digging small test pits. While the number of pits dug may be numerous, they typically were so small that collectively they affected a very small percentage of the land within the proposed critical habitat unit. A proliferation of dirt roads associated with this mining activity resulted in a loss of habitat and an increase in habitat fragmentation in the Coolgardie area. While an assessment of historical impacts due to mining activity may be difficult to do, we have suggested to the Bureau that they undertake an assessment of impacts due to current mining activity on their lands.

Comment 16: The description of the proposed critical habitat designation by Universal Transverse Mercator (UTM) coordinates is not acceptable, as the effects of the designation cannot correctly be tied to properties on the ground, especially for private landowners.

Our response: Our regulations (50 CFR 17.94(b) and 50 CFR 424.12(c)) set forth the requirements for describing areas included in a critical habitat designation. We are required to provide legal definitions of the boundaries. For this purpose, the boundaries for critical habitat provided as UTM North American Datum coordinates are used to describe the critical habitat boundaries. Since no critical habitat is being designated, there are no maps or descriptions in this rule.

Public comments

Comment 17: One commenter said that procedures as per 16 U.S.C. 1533(a)(3)(A) for the designation of critical habitat were not followed; specifically, best scientific data are unavailable to interested parties and therefore they presume that the available data are both insufficient and inaccurate. The commenter requested the ''best scientific data available'' that the proposed designation was based on as well as any comments made by the

State of California or the County of San Bernardino.

Our response: We sent the commenter the list of references cited in the rule and offered to send any particular references in which he was interested. We also forwarded comments we received from the County of San Bernardino.

Comment 18: An economic analysis is required to be provided ''not less than 90 days before the effective date of the regulation'' designating critical habitat.

Our response: A notice (69 FR 70971) announcing the availability of the draft economic analysis and reopening the comment period on the proposed critical habitat designation was published in the **Federal Register** on December 8, 2004. The public had an opportunity to comment on the economic analysis, and that opportunity was provided not less than 90 days before the effective date of the regulation. The comment period closed on January 7, 2005.

Comment 19: Exclusion of DOD and Bureau lands from critical habitat based on section 3(5)(A) of the Act would be unlawful because public funds and public lands (*e.g.*, Bureau lands) cannot be used to mitigate the taking of threatened and endangered species by private applicants and for private purposes, such as is being proposed in the West Mojave Plan (WMP) and the Fort Irwin Expansion Plan. The commenter cites U.S.C. 1539(a)(2)(A)(ii) [identical to section 10(a)(2)(A)] and 43 U.S.C. 869.

Our response: The conservation measures proposed by the DOD as part of its proposal to use additional training lands at Fort Irwin include the acquisition of private lands and the restoration of disturbed areas on public lands to offset the loss of habitat that will result from training activities. The DOD is a Federal agency and is undertaking these activities as part of its federally mandated mission. Therefore, the DOD's activities do not mitigate any effects of a project of any private party.

The cited section, 16 U.S.C. 1539(a)(2)(A)(ii) requires that an applicant (not a Federal agency) for an incidental take permit specify the funding that will be available to minimize and mitigate impacts to the species. If the Service issues an incidental take permit to local governments as part of the West Mojave Plan, funds may be generated by development proposed by both private parties and State and local agencies as a means of mitigating the impacts of the loss of habitat on species covered by the plan. These funds may be used to acquire private lands and to restore disturbed areas on public lands to promote the conservation of the covered species. Section 10(a)(1)(B) of the Act, its implementing regulations, and our policies do not prohibit the use of monies generated as a result of the permitting process in the funding of restoration activities on public lands; public lands, in and of themselves, cannot be used to mitigate for the impacts of private activities (Service 1996).

Finally, one component of the West Mojave Plan is a formal amendment, by the Bureau of Land Management, of the California Desert Conservation Area Plan. This amendment will apply only to the Bureau's (*i.e.*, public) lands. Consequently, no component of this amendment would involve the use of public funds or lands to mitigate the impacts of private activities.

Comment 20: The Service is proposing to close public lands to recreational activities that were previously dedicated to this purpose. Cities and counties that use these public lands for recreation would then be in violation of the Quimby Act (California State Code 66477). Furthermore, the economic impact of making these lands unavailable for dedication to recreational purposes under the Quimby Act would exceed 100 million dollars.

Our response: The Service is not closing any lands as a result of designating critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Federal lands managed by the Bureau are managed to provide for balanced stewardship of the lands and resources for all people. The Federal Lands Policy and Management Act of 1976 (FLPMA) provided for the establishment of the California Desert Conservation Area (CDCA) and required development of a management plan for this area. Different parts of the CDCA are managed for different purposes, depending on the sensitivity of the resources, public uses, and other factors such as health and safety. The Bureau lands in the area of Coolgardie Mesa that were proposed as critical habitat were previously designated through the CDCA plan as class L (limited) and M (moderate) use lands, indicating that certain uses were appropriate and others were not. With respect to recreation, because these lands are already classed as limited or moderate use, vehicle use is already restricted to approved routes of travel.

The Quimby Act does not apply to any of the lands within the proposed Coolgardie Unit. The purpose of the Quimby Act was to provide for parkland and open space for recreational purposes to help mitigate the impacts of property development. The lands on Coolgardie Mesa are remote from any cities or urban areas; therefore, Coolgardie Mesa would not be an appropriate location for any city or urban area that may need to set aside lands within its boundaries for recreation. However, for unrelated reasons, we have excluded this area from the critical habitat designation (see Application of Critical Habitat Under Section 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act).

Comment 21: There are numerous small businesses that will be affected by the proposed critical designation because they will have to pay a fee for recreation facilities in accordance with the Quimby Act. The Service needs to comply with the Regulatory Flexibility Act by taking into consideration these costs.

Our response: We disagree that numerous small businesses will be affected, based on the economic analysis that was made available on December 8, 2004, which addresses the economic impacts to several sectors, including recreational miners and OHV users. The economic analysis concluded that few, if any, impacts will affect these two user groups.

Comment 22: This proposal requires that an environmental impact statement be prepared because the proposal would devastate the urban outdoor recreation facilities that were previously designated under the Outdoor Recreation Act of 1963. The commenter also cites a number of State regulations, such as the Off-Highway Motor Vehicle Recreation Act of 1988, the California Outdoor Recreation Resources Plan Act of 1967, the California Recreation Trails Act of 1974, and the Federal Outdoor Recreation Act of 1963, to make the point that critical habitat designation in the Coolgardie unit would severely impact the supply of outdoor recreation resources and facilities in the State.

Our response: We disagree that a critical habitat designation in the Coolgardie Unit would severely impact outdoor recreation. The Bureau has been responsible for the management of the lands in this area since 1946 when the agency was formed. The Bureau has not designated any recreation areas or facilities within the proposed Coolgardie unit. This area is almost entirely within lands classed for limited and moderate use, which restricts vehicle use to approved routes of travel.

Furthermore, the Service is not required to conduct an environmental impact statement or environmental assessment per the National

Environmental Policy Act (NEPA) for the proposed critical habitat designation. We published a notice in the **Federal Register** on October 25, 1983 (48 FR 49244), outlining the reasons for our determination that an environmental analysis as defined by the NEPA is not required when designating critical habitat under the Endangered Species Act of 1973, as amended. This position has been approved by the Ninth Circuit Court of Appeals (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Comment 23: One commenter asked why the Service would consider providing critical habitat for this ''loco weed,'' if, as we have stated, [''the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources.''

Our response: Section 4(b)(2) of the Act directs us to consider the designation of critical habitat at the time the species is listed. On November 15, 2001, our failure to follow these regulations in designating critical habitat for *Astragalus jaegerianus* and seven other plant and wildlife species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Norton* (Case No. 01–CV–2101–IEG (S.D.Cal.)). Our court settlement obligated us to pursue the designation of critical habitat within certain timeframes.

''Locoweed'' is a term given to certain species of *Astragalus*, that accumulate selenium in alkaline soils, which when eaten by livestock is toxic. This term does not apply to *Astragalus jaegerianus* because it is not a selenium accumulator.

Comment 24: One commenter was not convinced that this species needs protection; the commenter thinks that species are being counted as subspecies and populations, and believes that the data do not always show a direct correlation between human activities and species decline.

Our response: Astragalus jaegerianus is not being counted as a subspecies or populations (however, please note that the Endangered Species Act directs us to treat subspecies and varieties of plants as full species for purposes of the Act). In his monograph on the genus *Astragalus*, Barneby (1964) placed this species in its own monotypic section of the genus, indicating its distinctness from other species of milk-vetch. Current taxonomic treatments of the genus uphold the distinctness of this taxon (Spellenberg 1993).

We frequently use data gathered on other species or their habitats and how they respond to various types of disturbance to infer that similar processes are occurring for the species of interest. We have performed this type of analysis for *Astragalus jaegerianus*. Human impacts on desert ecosystems have been studied, and therefore we have a body of literature to reference. For instance, we know the soils and plant communities of desert ecosystems are less resilient than other ecosystems in recovering from the effects of vehicular traffic (*e.g.*, see Latting and Rowlands 1995; Webb and Wilshire 1983; Prose and Metzger 1985). Because we know the structure and composition of desert plant communities is altered by vehicular traffic, and because we know that *A. jaegerianus* depends on particular shrub communities, we infer that if those shrub communities are destroyed or eliminated by vehicular traffic, then *A. jaegerianus* will also be destroyed or eliminated.

Comment 25: Critical habitat cannot close the Coolgardie area to mineral prospecting; this can only be done through a process of withdrawal of areas from mineral entry as specified in FLPMA.

Our response: We concur that the designation of critical habitat would not close the Coolgardie area to mineral entry. We note that the Bureau has proposed to withdraw the Coolgardie area from mineral entry in the WMP; however, a withdrawal request has not been prepared at this time. We also note that, even if a withdrawal from mineral entry were enacted, it would only preclude the possibility of new claims being filed; valid existing claims would not be affected, and claims found to be invalid would be vacated.

Comment 26: One commenter had concerns about the potential exclusion of critical habitat from military lands based on an updated INRMP. With over half of the proposed critical habitat occurring on Fort Irwin, the commenter claims that the ultimate result of such exclusion could be extinction of the species. The DOD's current proposal would eliminate 21.5 percent of *Astragalus jaegerianus* habitat, including 66 percent of the Montana-Brinkman population and 20 percent of the Paradise Valley population. If the INRMP is to be used as an exclusion, it would have to recognize that critical habitat is the minimum standard for conservation and should not be subjected to training.

Our response: Since Fort Irwin's INRMP is still in draft form, Section 4(a)(3)(B) can not be applied at this time. Because the DOD has stated that Fort Irwin is essential to national security, we have excluded this area from critical habitat under section 4(b)(2) of the Act.

In 2004, we completed a biological opinion on the Army's proposed expansion of military training at Fort Irwin in which we determined that, even though individuals and habitat of *Astragalus jaegerianus* would be lost due to training, the DOD's proposed activity would not cause jeopardy to the species. In connection with that consultation, DOD proposed conservation measures, such as imposing restrictions on certain portions of the habitat and implementing an education program for the species (see comment 6), that the Service believes will provide conservation benefits to the species. The draft INRMP contains these same measures. We believe that the measures that the Army has proposed to conserve *A. jaegerianus* in the draft INRMP, which are identical to those that we consulted with DOD on, would be sufficient to provide for the survival of the species.

Comment 27: The Service should not use the proposed designation to undermine the utility of the important and legally mandated conservation tool. In cases such as *Forest Guardians* v. *Babbit* (1998) and *Arizona Cattlegrowers* v. *FWS* (2001), courts have agreed that there are benefits to designation, such as providing information that would assist in prioritizing conservation planning and management efforts, and avoiding the piecemeal conservation approach when species management is fragmented into smaller planning entities. Furthermore, critical habitat was intended to require a recovery standard, which incorporates consideration of cumulative impacts beyond the piecemeal jeopardy standard.

Our response: The process of proposing critical habitat has provided informational benefits for planning the conservation and management of *Astragalus jaegerianus.* Unlike other species that may range over a larger number of jurisdictions and land management agencies, as of 2004 when the proposed critical habitat designation was prepared, 85 percent of the range of *A. jaegerianus* occurred primarily under the jurisdiction of two Federal agencies—the Department of the Army and the Bureau of Land Management; this has facilitated conservation planning for this species (as of February 2005, 92 percent of the range of the species occurs on Federal lands). Even prior to the listing of the species in 1998, we coordinated with these two

agencies to ensure that they were including measures to conserve and manage habitat for *A. jaegerianus* appropriately during the course of their proposed activities. Aside from the lands that are proposed for active military training by DOD on Fort Irwin, all other federal lands on Fort Irwin, including most of the NASA-leased lands, and all lands managed by the Bureau that are habitat for *A. jaegerianus* are being managed primarily for the conservation of the species. Although some private lands are interspersed with Bureau lands within the proposed critical habitat boundaries, critical habitat for plant species carries no additional requirements for private landowners unless there is a Federal nexus. In the case of the private lands where *A. jaegerianus* occurs, most of these will be purchased by the Army and managed by the Bureau as parts of the Paradise Valley ACEC and Coolgardie ACEC; as of February 2005, over 50 percent of the private lands have already been purchased. The designation of critical habitat for plant species on private lands confers no regulatory authority unless there is a Federal nexus. The County of San Bernardino, the agency that has jurisdiction over private lands in this area, has been alerted through the critical habitat designation process of the value of these lands to the conservation of *A. jaegerianus*, and should take this into consideration during its permitting processes.

Section 7 requires that federal agencies ensure that activities they undertake not jeopardize the continued existence of a listed species or adversely modify or destroy its designated critical habitat. The processes for determining whether jeopardy and adverse modification are likely to occur involve analyzing the same types of information from the same time frames (*i.e.*, the current rangewide condition of the species and its critical habitat, the current condition of the species and its critical habitat in the action area, the effects of the action under review on the species and its critical habitat, and the effects of any future non-Federal action that is reasonably certain to occur within the action area). The courts have invalidated the Service's definition of adverse modification of critical habitat. The Service is currently reviewing the decision to determine what effect it may have on the outcome of section 7 consultations. We believe that the actions to be undertaken by the Bureau through the WMP, and by DOD through the INRMP, provide conservation benefits which exceed those that would arise from the designation of critical habitat, because the WMP and INRMP provide positive conservation measures, such as monitoring and fencing of certain portions of the habitat, rather than just avoiding adverse modification.

Economic Issues

Comment 28: The Service should devote as much time, energy, and language to the estimation of economic benefits and costs in relation to the proposed critical habitat. The commenter provided us with a list of potential economic impacts that should be included in the analysis.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Our approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). Where data are available, our analyses do attempt to measure the net economic impact. For example, if the fencing of *Astragalus jaegerianus* habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then our analysis would attempt to net out the positive, offsetting economic impacts associated with their visits (*e.g.*, impacts that would be associated with an increase in tourism spending). However, while this scenario remains a possibility, we found no data that would allow us to measure such an impact, nor was such information submitted to us during the public comment period.

Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus we believe that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary, because Congress has already clarified the social importance of the species and its habitat. As a practical matter, we note the difficulty in being able to develop credible estimates of such values as they are not readily observed through typical market transactions. In sum, we believe that society places the utmost value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus we need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

Comment 29: One commenter suggested revising the statement made in the draft economic analysis (DEA) that in its earlier biological opinion (BO), the Service concluded that the addition of training lands at Fort Irwin is not likely to jeopardize the continued existence of *Astragalus jaegerianus*. The comment notes that this BO did not consider adverse modification with regard to species recovery and advises that the statement in the DEA should be revised to reflect current case law invalidating the Service's definition of adverse modification.

Our Response: The DEA states that the past formal consultation regarding the proposed addition of training lands at Fort Irwin resulted in a Service BO concluding that the proposed action was not likely to jeopardize the continued existence of *Astragalus jaegerianus*. This statement correctly characterizes this past consultation which occurred prior to designation of critical habitat and thus did not consider whether the proposed activity would adversely modify or destroy critical habitat, and the associated costs of this consultation are appropriately included as pre-designation impacts of species conservation. The DEA acknowledges (in footnote 16), however, that a recent Ninth Circuit judicial opinion (*Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*) has invalidated the Service's regulation defining destruction or adverse modification of critical habitat, and notes that the Service is currently reviewing the decision to determine what effect it may have on the outcome of section 7 consultations.

Comment 30: One commenter stated that the DEA should clearly state that critical habitat designation for plants would not have any legal impact on private lands unless there were a Federal nexus, and therefore the economic impact to private landowners from this designation should be zero.

Our response: As detailed in the DEA, no impacts are anticipated to private landowners associated with *Astragalus*

jaegerianus conservation efforts. The DEA discusses the potential for changes to private property values associated with public attitudes about the limits and costs of critical habitat. However, this effect should be minimized since we anticipate most of the private property will be transferred to Federal ownership within the next few years.

Comment 31: A commenter stated that the range of administrative consultation costs applied in the DEA is too broad and offers that Federal agencies likely keep better track of consultation costs and may provide a more realistic range of costs.

Our response: The economic analysis employs a consultation cost model to represent the likely range of administrative costs of informal and formal section 7 consultations. The broad range takes into consideration that consultations involve varied levels of effort. The cost model is based on anticipated administrative effort from a survey of a number of Federal agencies and Service Field Offices across the country. The administrative effort is typically defined in number of hours spent, and then translated into a dollar value by applying the appropriate average government salary rates. In interviewing the agencies relevant to this DEA, the representatives were asked if the estimated administrative costs seemed reasonable. In the case that the agency anticipated a different range of costs for its particular activities within the proposed designation, that cost range was applied to the relevant consultations in place of the generic cost model estimates. That is, where specific information was available regarding the level of effort for a particular consultation, the unique cost estimates were applied.

Comment 32: One commenter said that, because many of the conservation efforts benefit multiple species, including informal and formal consultations, it is not appropriate to allocate all costs to *Astragalus jaegerianus* conservation. This comment suggested that costs be prorated by species that benefit from the critical habitat designation and other conservation actions. As an example, the comment states that consultation costs are overestimated, as most consultations involve multiple species.

Our response: To the extent possible, the DEA distinguished costs related specifically to *Astragalus jaegerianus* conservation where multiple species are subject to a single conservation effort or section 7 consultation. In the case that another species clearly drives a project modification or conservation effort, the associated costs are appropriately not attributed to *A. jaegerianus.* For each consultation and conservation effort, the DEA attempts to identify costs specifically related to *A. jaegerianus.* In the case of administrative consultation costs, the DEA applies a standard cost model used to estimate a range of administrative costs of consultation. These costs are considered representative of the potential range of costs typically experienced for a consultation regarding a single species. The cost model assumes that consultations involving more than one species typically involve higher administrative costs. Accordingly, although consultations described in the DEA may involve multiple species, the administrative costs as estimated by applying this cost model are considered to be predictive of those costs due specifically to the inclusion of *A. jaegerianus* in the consultation.

Comment 33: According to one comment provided, conservation efforts associated with the Fort Irwin expansion predesignation consultations are overstated because many of these consultations involved multiple species. The comment stated that DOD monitoring and maintenance costs do not appear to be prorated to include the other sensitive species that occur on DOD lands.

Our response: As mentioned previously, the DEA attempts to identify costs specifically related to *Astragalus jaegerianus* conservation. Administrative costs as estimated in the DEA (*e.g.*, associated with development of the Key Elements Report, preliminary review of expansion lands proposal and INRMP, etc.) are those specifically attributable to consideration of *A. jaegerianus* and habitat. The costs of surveys, monitoring, and fencing in the DEA represent only *A. jaegerianus*-specific efforts, and not similar efforts for other species.

Comment 34: A comment letter regarding the DEA stated that the WMP costs should be divided among species considered in the plan. This comment offered that costs of *Astragalus jaegerianus* conservation may be determined by applying the ratio of proposed critical habitat acreage to the entire WMP acreage or as a percentage of the total number of species covered in the WMP.

Our response: It is not appropriate to simply divide the acreage of the proposed critical habitat designation that overlaps the proposed WMP area by the total acres covered in the WMP to establish the percentage of total WMP costs relevant to *Astragalus jaegerianus.* It is likely that particular regions require more active management than others. The lands within the WMP that contain proposed critical habitat designation for *A. jaegerianus,* for example, may require particular attention and management, as they are known to contain sensitive species. The DEA also acknowledges that the WMP considers multiple sensitive species and does not include all costs of WMP conservation efforts for all species, but isolates those related specifically to *A. jaegerianus.* That is, the full costs of development and implementation of the WMP are not attributed to *A. jaegerianus* conservation efforts in the DEA. The DEA isolates conservation efforts specifically included in the proposed WMP for *A. jaegerianus,* including increasing law enforcement (of OHV restrictions) in the proposed *A. jaegerianus* conservation areas, route maintenance and rehabilitation, and maintenance of signage and route maps.

Comment 35: One commenter noted that, as the WMP is in developmental stages and no final environmental impact statement has been completed, the analysis of the WMP and its conservation efforts for *Astragalus jaegerianus* are speculative and should be represented as such or deleted from the DEA. Following that, the commenter states specifically that the costs of an annual report on the progress of the WMP should be deleted because the WMP is still only a draft, and further, under the WMP, annual monitoring is not required.

Our response: The DEA acknowledges that the WMP is not yet complete. Significant time and effort, however, have been already devoted to its development (the BLM estimates more than $5 million has been spent on the Plan) and the Notice of Availability for the final EIS is expected to be published in the **Federal Register** soon (letter from BLM to USFWS, January 6, 2005). As such, the DEA considers the implementation of the WMP to be a reasonable forecast of future land management in the region. Regarding the costs of annual monitoring of conservation measures implemented, the West Mojave Management Team (developers of the WMP) anticipates preparing a report summarizing progress specifically on *Astragalus jaegerianus* conservation measures and the status of *A. jaegerianus* on WMP lands.

Comment 36: According to one comment letter, the costs of developing the WMP included in the DEA seem underestimated.

Our response: According to BLM (William Haigh, personal comm. May 18, 2004), the primary agency involved in the multijurisdictional WMP, the costs of developing of the WMP were

approximately $5 million. Importantly, this estimate is provided for context and is not a cost component of the DEA. The WMP covers a large area and considers many species; the DEA evaluates only the portion of those costs relevant to *Astragalus jaegerianus.*

Comment 37: With respect to the WMP, one comment stated that costs of route designation appear highly inflated. The comment reasons that if $700,000 was spent surveying routes in the WMP's 9.4 million acres, $20,000 to $30,000 seems high for the 25 miles of routes in *Astragalus jaegerianus* proposed critical habitat. Further, the estimate of 5 to 25 percent of the route maintenance seems high, as proposed critical habitat makes up less than 0.2% of the WMP area.

Our response: First, according to the BLM (William Haigh, personal comm. May 18, 2004), the $700,000 was spent surveying 1.5 million acres within the WMP area, not 9.4 million acres. Second, it is not necessarily appropriate to assume that there is a linear relationship between miles surveyed and survey cost. Rather than develop a ''rule of thumb,'' the DEA employs specific information provided by the BLM regarding estimated BLM total expenditures on the surveys ($700,000) and the portion of that cost relevant to surveys within *Astragalus jaegerianus* conservation areas as outlined by the proposed WMP ($20,000 to $30,000). As the BLM conducted these efforts, this is considered to be the best information available regarding these costs. Further, communications with the BLM (May 18, 2004, and September 13, 2004) have supported the DEA estimate that up to 25 percent of route maintenance costs of the WMP are related to *A. jaegerianus* conservation. The BLM notes and the DEA reflects, however, that this is a high-end estimate and that the actual range of potential costs related to *A. jaegerianus* conservation is between 5 and 25 percent of the total costs. Although the proposed critical habitat designation is relatively small compared to the entire WMP area, this range of costs is reasonable considering that sensitive species (*i.e.*, *A. jaegerianus*) are known within the proposed critical habitat designation area: therefore, more effort may be spent in maintenance of *A. jaegerianus*-occupied acres as compared to other, less sensitive lands.

Comment 38: One comment stated that while a minerals withdrawal from the WMP lands proposed for critical habitat is preferable, there is no guarantee this would happen and so associated costs are not certain.

Our response: The DEA does not anticipate impacts to casual use mining participants or private individuals holding mining claims in the region. This is because most of the digging and panning occurs in pockets of deeper, gold-bearing soil rather than the shallow soiled areas where *Astragalus jaegerianus* occurs. The costs associated with mining in the DEA are for BLM to: (a) Conduct validity exams at existing mining claims to determine whether a valuable mineral deposit exists; and (b) assess whether claimant's mining activity may result in significant ground disturbance. The Bureau has yet to determine whether current mining activity has any impact on *A. jaegerianus*.

Comment 39: A comment provided from the DOD states that the economic analysis is adequate but that it did not estimate costs of acquiring better information on the distribution of the species and conducting research on the impacts of training (*e.g.*, the effects of dust or obscurants) on endangered species. Although these efforts are recommended by the Service, conducting such research and experiments can be cost prohibitive.

Our response: While the DEA does include past costs of species survey and research efforts, future costs of similar efforts are not included. Future costs of species conservation efforts on Fort Irwin in the DEA include maintenance of *Astragalus jaegerianus* conservation areas, acquisition of private lands for *A. jaegerianus* conservation outside of Fort Irwin, and implementation of the ongoing education program regarding *A. jaegerianus*. The DOD expects to spend approximately $100,000 per year for the next 5 years to conduct research on seed germination and banking and management of experimental populations. DOD further anticipates spending approximately $50,000 per year for 5 years to study the cumulative effects of dust obscurants on *A. jaegerianus*. This new information is included in the revised economic analysis of the proposed critical habitat designation.

Comment 40: A comment provided on the DEA noted that Fort Irwin must acquire all lands within the boundaries of the expansion and that including purchase of these lands as a cost of *Astragalus jaegerianus* conservation overestimates the costs attributable to *A. jaegerianus*. The comment further stated that Fort Irwin must purchase additional acres outside the boundaries of the expansion area to mitigate land impact regardless of critical habitat designation and that it is likewise not appropriate to attribute these costs to the *A. jaegerianus* critical habitat designation.

Our response: The DEA does not include costs of purchase of private lands within the boundaries of the Fort Irwin expansion area as a cost related to *Astragalus jaegerianus* conservation, and only includes purchase of those private lands outside of Fort Irwin that overlap with the proposed critical habitat designation for *A. jaegerianus*. The purpose of DOD purchase of *A. jaegerianus* habitat lands to be managed by the Bureau as conservation areas is to mitigate potential impact to *A. jaegerianus* from training on habitat within Fort Irwin lands. Purchase of these lands outside of Fort Irwin and within the proposed critical habitat designation is therefore appropriately considered related to *A. jaegerianus* conservation in the DEA.

Comment 41: One commenter stated that as the Key Elements Report primarily considered the desert tortoise, costs of the review of this plan ($20,000–$85,000) related to the *Astragalus jaegerianus* seem very high.

Our response: The Service estimates that the Key Elements report involved roughly double the effort of a typical consultation due to its coverage of complex issues regarding military training and species conservation. It is unclear whether this estimate considers only the administrative effort of *A. jaegerianus*-related issues, or all species considered within the Key Elements report. In the case that this cost includes efforts considering, for example, the desert tortoise, administrative costs of consultation related to *A. jaegerianus* are overestimated.

Comment 42: According to one comment, the 2001–2003 DOD surveys for *Astragalus jaegerianus* included lands outside of the proposed critical habitat designation and these costs should therefore not be included in the DEA.

Our response: The DOD conducted *Astragalus jaegerianus* surveys to obtain better information regarding the distribution of the species. The cost of these *A. jaegerianus* surveys are therefore considered conservation efforts related to *A. jaegerianus* and are included in the pre-designation costs within the DEA.

Comment 43: While the DOD has committed $75 million for conservation, one commenter highlighted that these monies will be used for a variety of mitigation efforts, not just for *Astragalus jaegerianus*.

Our response: The DEA acknowledges that the $75 million will be applied to myriad efforts considering multiple species. This estimate is provided for context in the DEA and is not included

in full as a component of the costs of conservation for *Astragalus jaegerianus*.

Comment 44: One comment stated that an Integrated Natural Resources Management Plan (INRMP), such as that for Fort Irwin, would need to be updated whenever a new federally listed species is discovered on the base or when a species is listed. The cost of updating the INRMP should therefore not be considered a result of the critical habitat designation.

Our response: The INRMP did not previously include a discussion of *Astragalus jaegerianus* management and is therefore being updated to address issues and management related to *A. jaegerianus*. The costs of updating the INRMP are therefore appropriately included in the DEA as a conservation effort related to *A. jaegerianus*.

Comment 45: One comment asserted that the annual monitoring and reporting costs on NASA lands are inflated. This comment further questioned why NASA species survey costs are included, as the DOD already surveyed NASA-leased lands and further surveying would be redundant.

Our response: Written communication from NASA (March 4, 2004, and July 14, 2004) provided the costs of annual monitoring and reporting on *Astragalus jaegerianus*. The DEA estimates costs of approximately $500,000 in the first year (reflecting NASA's stated intention to resurvey all of the areas previously surveyed by DOD to independently verify the species' distribution on NASA lands leased from DOD) and $30,000 per year in subsequent years to monitor and report on the status of the species. Communication with NASA following the publication of the DEA clarifies that these cost estimates include costs for surveys and monitoring of not only *A. jaegerianus*, but also the desert cymopterus (*Cymopterus deserticola*) and the Mojave ground squirrel. NASA estimates that three-fifths of the costs of these conservation efforts are specifically due to consideration of *A. jaegerianus*. The revised economic analysis therefore revises impacts to NASA of *A. jaegerianus* conservation efforts to $300,000 in the first year and $18,000 per year in subsequent years for monitoring and reporting on the status of *A. jaegerianus* on its lands leased from DOD.

Comment 46: According to one comment on the DEA, off-highway vehicle (OHV) enthusiasts rarely purchase motorcycles/equipment for a single event. The costs to participate in a dual sport event are therefore overstated.

Our response: The DEA does not forecast any impacts to OHV users as a result of species conservation efforts. Information on the prevalence of OHV use and dual sport events in the area is provided in the DEA as context for the analysis. First, the Bureau does not issue formal permits for OHV use within the proposed lands. All OHV users must remain on open routes within the proposed critical habitat and are therefore not anticipated to adversely impact *Astragalus jaegerianus* or its habitat. Second, dual sport events may require a Bureau-issued Special Recreation Permit and may pass through routes within the proposed critical habitat. These events, however, are also required to adhere to the open routes. While dust resulting from these events may be a concern for *A. jaegerianus,* multiple route options are available for these events, and participants are typically flexible regarding rerouting around particular areas.

Comments From the State

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for [her] failure to adopt regulations consistent with the agency's comments or petition.'' We contacted the CDFG concerning the proposed critical habitat designation; however, it chose not to submit comments on the proposed critical habitat designation for *Astragalus jaegerianus.* The State notified us that submitting comments on the proposed critical habitat designation was a low priority for them because they are participants in the WMP planning process, and have previously commented on the conservation measures that were proposed for *Astragalus jaegerianus* in the draft WMP (CDFG, in litt. 2003). Furthermore, many of the private parcels that would be subject to State environmental regulations have been or are being purchased by DOD and transferred to the Bureau for inclusion in the Coolgardie and Paradise ACECs. Because of this action, the State's concern with private lands issues has been greatly diminished.

Summary of Changes From the Proposed Rule

In the development of our final designation of critical habitat for *Astragalus jaegerianus,* we reviewed comments received on the proposed designation of critical habitat and the draft economic analysis. In addition to incorporating these comments in this final rule and revised economic analysis, where appropriate, we made the following changes to the proposed designation:

(1) We excluded from critical habitat portions of the Montana-Brinkman and Paradise units that occur on DOD lands at Fort Irwin, including those proposed for military training and those proposed for conservation of *Astragalus jaegerianus* under section 4(b)(2) of the Act.

(2) We excluded from critical habitat under sections 4(b)(2) and 3(5)(A) of the Act the portion of the Paradise unit and all of the Coolgardie unit that occur on Bureau lands where an Area of Critical Environmental Concern in the WMP has been proposed to be established.

(3) We no longer consider the *Astragalus jaegerianus* habitat on lands leased to NASA from the DOD at what is known as the Venus Research and Development site to be essential to the conservation of the species and have therefore removed this area from the final critical habitat designation. See response to Comment 10.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best

scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation, we will not designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for conservation.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that are essential to the conservation of *Astragalus jaegerianus.* We have also reviewed available information that pertains to the habitat requirements of this species. This information included data from our files that we used for listing the species; geologic maps (California Geologic Survey 1953), recent biological survey, and reports, particularly from the Army surveys of 2001 (Charis 2002); additional information provided by the Army, the Bureau of Land Management, those engaged in research on *A. jaegerianus,* and other interested parties; and discussions with botanical experts. We also conducted multiple site visits to all three of the units that were proposed for critical habitat designation.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas proposed for critical habitat for *Astragalus jaegerianus* are within the species' historical range and contain one or more of the biological and physical features (primary constituent elements) identified as essential for the conservation of the species. The Act defines critical habitat as areas containing physical and biological characteristics essential to the conservation of the species. Conservation is in turn defined as the point at which the Act's protections are no longer necessary. Accordingly, to identify critical habitat for *Astragalus jaegerianus,* we must first determine at what point the species may be considered ''conserved''. Although the Service has not completed preparation of a recovery plan for this species, recovery criteria most likely will include/be based on the persistence of stable populations over time in the four areas where the species is currently known to occur. To achieve this will likely require (1) monitoring of key life history attributes, including reproduction and recruitment rates; (2) maintaining habitat that is required for the species to carry out these essential functions; and (3) avoiding and minimizing threats that alter the primary constituent elements within the habitat or the ability of the species to complete its life cycle. The primary constituent elements essential to the conservation of *A. jaegerianus* habitat are based on specific components that are described below.

Space for Individual and Population Growth, Including Sites for Germination, Pollination, Reproduction, Seed Dispersal, and Seed Bank

The distribution of *Astragalus jaegerianus* is restricted to four geographically distinct areas that occur north of the city of Barstow in the west

Mojave Desert, San Bernardino County. The four populations of *A. jaegerianus* are arrayed more or less linearly along a 20-mile-long (32 km) axis that trends in a northeasterly-to-southwesterly direction. The region is characterized by block-faulted mountain ranges separated by alluvium-filled basins. The basins consist of broad valley plains, gently sloping bajadas, and rolling hills with low relief (Charis 2003). At the landscape level, the plant community within which *A. jaegerianus* occurs can be described as Mojave mixed woody scrub (Holland 1998), Mojave creosote bush scrub (Holland 1988; Cheatham and Haller 1975; Thorne 1976), or creosote bush series (Sawyer and Keeler-Wolf 1995). More specifically, the sites where *A. jaegerianus* occurs have a high diversity of low shrub species, including: Turpentine bush (*Thamnosma montana*), white bursage (*Ambrosia dumosa*), Mormon tea (*Ephedra nevadensis*), Cooper goldenbush (*Ericameria cooperi* var. *cooperi*), California buckwheat (*Eriogonum fasciculatum* var. *polifolium*), brittlebush (*Encelia farinosa* or *Encelia actoni*), desert aster (*Xylorrhiza tortifolia*), goldenheads (*Acamptopappus spherocephalus*), spiny hop-sage (*Grayia spinosa*), cheesebush (*Hymenoclea salsola*), winter fat (*Kraschenninikovia lanata*), and paper bag bush (*Salazaria mexicana*). *Astragalus jaegerianus* grows within what are referred to as ''host shrubs,'' which it uses for structural support. The first five of the shrubs listed above, along with dead shrubs, are host to approximately 75 percent of the *A. jaegerianus* individuals that have been observed. Host shrubs may also be important in providing appropriate microhabitat conditions (such as shelter from herbivores, and modified soil and water conditions) for *A. jaegerianus* seed germination and seedling establishment (Charis 2002).

These plant communities also support insects that pollinate *Astragalus jaegerianus*. Based on limited observation, *Anthidium dammersi*, a solitary bee in the megachilid family (Megachilidae), was found to be the most frequent pollinator observed on *A. jaegerianus* in 2003 (Kearns 2003). This species will fly up to 0.6 mi (1 km) away from its nest; however, if floral resources are abundant, it will decrease its flight distances accordingly (Doug Yanega, University of California Riverside, pers. comm. 2003). Three other occasional visitors to *A. jaegerianus* were a hover fly (*Eupeodes volucris*), a large anthophrid bee (*Anthophora* sp.), and the white-lined sphinx moth (*Hyles lineata*) (Kearns 2003). Additional pollinator observations are scheduled for the 2005 flowering season (Hopkins 2005).

These plant communities also support animal species that are likely to disperse the seeds of *Astragalus jaegerianus*. Compared with the seed sizes of many desert annual species, the *A. jaegerianus* seed's relatively large size of would make them an attractive food source to ants and other large insects, small mammals, and birds (Brown et al. 1979). These animal species would also be the most likely vectors to disperse *A. jaegerianus* seeds within and between populations. Rasoul Sharifi (pers. comm. 2004) confirmed the presence of *A. jaegerianus* seeds within native ant coppices (mounds). Seed may also be moved across the soil surface by wind or running water (Sharifi et al. 2004); however, long-distance dispersal by these means is more likely a rare than common event.

Although the aboveground portion of *Astragalus jaegerianus* individuals die back each year, they persist as a perennial rootstock through the dry season. The perennial rootstock may also allow *A. jaegerianus* to survive occasional dry years, while longer periods of drought might be endured by remaining dormant (Beatley in Bagley 1999). Individuals begin regrowth in the late fall or winter, once sufficient soil moisture is available. Seed set typically follows flowering in April and May. However, if climatic conditions are unfavorable, the plants may desiccate prior to flowering or completing seed set. Therefore, substantial contributions to the seedbank may occur primarily in climatically favorable years. The seedbank then persists in the soil around the base of host shrubs and allows for germination and growth of new individuals in those years when suitable climatic conditions (rainfall, temperatures) occur.

Areas That Provide the Basic Requirements for Growth (Such as Water, Light, and Minerals)

Astragalus jaegerianus is most frequently found on shallow soils derived from Jurassic or Cretaceous granitic bedrock. A small portion of the individuals located to date occur on soils derived from diorite or gabbroid bedrock (Charis 2002). In one location on the west side of the Coolgardie site, plants were found on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand. Soils tend to be shallower immediately adjacent to milk-vetch plants than in the surrounding landscape; at the Montana Mine site, rotten, highly weathered granite bedrock was reached within 2 in (5 cm) of the soil surface near *A. jaegerianus* plants (Fahnestock 1999). The topography where *A. jaegerianus* most frequently occurs is on low ridges and rocky low hills where bedrock is exposed at or near the surface and the soils are coarse or sandy (Prigge 2000b; Charis 2002). Most of the individuals found to date occur between 3,100 and 4,200 ft (945 to 1,280 m) in elevation (Charis 2002). At lower lying elevations, the alluvial soils appear to be too fine to support *A. jaegerianus*, and at higher elevations the soils may not be developed enough to support *A. jaegerianus* (Prigge 2000b; Charis 2002).

Sharifi *et al* (2004) have noted annual rainfall amounts at two weather stations representative of the northern portion of the range of *Astragalus jaegerianus* and compared them to germination and survival rates of over 200 *A. jaegerianus* individuals. They believe that successful recruitment (addition of individuals to a population by reproduction) is correlated with, among other factors, annual precipitation of at least 15 cm (5.9 in). Annual precipitation between 7 and 15 cm (2.8–6 in) may represent years when established individuals continue to persist, though with some death due to water stress at the lower levels; annual precipitation of less than 7 cm may be years when many individuals die due to water stress or remain dormant. Although many years may not provide optimal climatic conditions to result in germination and seed set of *Astragalus jaegerianus*, the region north of Barstow provides the appropriate soils, vegetation communities, and rainfall patterns to support the growth of *A. jaegerianus*.

Based on the best available information at this time, the primary constituent elements of critical habitat for *Astragalus jaegerianus* consist of:

(1) Shallow soils (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock and at one location on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(2) The host shrubs (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) within which *Astragalus jaegerianus* grows, most notably *Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* ssp. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*, and *Salazaria mexicana* that are usually found in mixed desert shrub communities.

Criteria Used To Identify Essential Habitat

In our proposed critical habitat designation (69 FR 18018), we delineated critical habitat units to provide for the conservation of *Astragalus jaegerianus* at the four sites where it is known to occur. All four sites are essential habitat because *A. jaegerianus* exhibits life history attributes, including variable seed production, low germination rates, and habitat specificity in the form of a dependence on a co-occurring organism (host shrubs), all of which make it particularly vulnerable to extinction (Keith 1998; Gilpin and Soule 1986). Please refer to the proposed rule (69 FR 18018) for details on how we determined the boundaries of the proposed critical habitat units.

Special Management Considerations or Protections

Within the geographical area occupied by the species special management considerations or protections may be needed to maintain the physical or biological features that are essential to the conservation of *Astragalus jaegerianus*. Habitat for *A. jaegerianus* within the proposed Goldstone-Brinkman, Paradise, and Coolgardie units may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and vehicles (military vehicles or unauthorized OHV users) that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *A. jaegerianus* in the Goldstone-Brinkman, Paradise, and Coolgardie units has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation will increase, that changes in composition and structure of the plant community may be altered by the spread of non-native plants, and that the direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them.

Application of Critical Habitat Under Section 3(5)(A), 4(a)(3), and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Section 318 of fiscal year 2004 the National Defense Authorization Act (Pub. L. 108–136) amended the Endangered Species Act to address the relationship of Integrated Natural Resources Management Plans (INRMPs) to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. Fort Irwin has prepared a draft INRMP which includes *Astragalus jaegerianus*. We are currently consulting with Fort Irwin on the draft INRMP. It is not likely that the INRMP will be finalized prior to publication of this rule and therefore, section 4(a)(3)(B) cannot be applied.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations we have used the provisions outlined in sections 3(5)(A), 4(a)(3)(B), and 4(b)(2) of the Act to evaluate those specific areas proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of these sections of the Act to lands essential to the conservation of *Astragalus jaegerianus* to evaluate and exclude them from final critical habitat.

Relationship of Critical Habitat to Lands Managed by the Bureau of Land Management (Bureau)

Under section 3(5)(A) and (4)(b)(2) of the Act, the Service is excluding from critical habitat the Coolgardie Unit and a portion of the Paradise Unit that were proposed for designation. We provide greater explanation below.

As discussed in the proposed rule (69 FR 18018), the Bureau has led the development of the West Mojave Plan (WMP) (see additional information at *http://www.ca.blm.gov/cdd/wemo.html*). The final WMP was published in February 2005 and the Notice of Availability for the final WMP Final Environmental Impact Statement was published on April 1, though the Record of Decision is due to be signed by July 2005. The WMP includes the Federal action of amending the Bureau's California Desert Conservation Area Plan and the framework for the

development of an HCP for non-Federal lands within the planning area. Conservation of *A. jaegerianus* is a key factor that was considered in the development of the WMP. We have been providing technical assistance to the Bureau to ensure that the WMP provides for protection and management of habitat essential for the conservation of this species. In addition, the Bureau is currently consulting with the Service on its proposed amendments to the California Desert Conservation Area Plan under section 7 of the Act. As part of the WMP, the Bureau has proposed to establish the Coolgardie Mesa and West Paradise Conservation Areas, to implement management actions that will contribute toward the conservation of the species, and to modify current activities within these areas so that such activities will not impair the conservation of the species. The WMP does not contain specific measures to conserve *A. jaegerianus* on private lands; however, the WMP targets these lands for acquisition and subsequent management by the Bureau for the conservation of the species. The DOD is providing the funding to acquire these private lands in the Coolgardie Mesa and West Paradise Conservation areas. As of February 2005, the DOD had already acquired over 50 percent of the 4,300 ac of private lands outside of Fort Irwin and included in the proposed critical habitat designation.

We have reviewed the Bureau's WMP, and we find that it meets the three criteria we use for evaluating such plans as discussed above. The WMP provides an adequate conservation management plan that covers the species and provides for adaptive management sufficient to conserve the species. The first criterion is whether the plan is complete and provides a conservation benefit to the species. The WMP includes prescriptions for establishing two ACECs that include all the known habitat for *Astragalus jaegerianus* outside of DOD lands at Fort Irwin. The areas will be managed to maintain the integrity of the habitat, and include both protective measures, such as restricting certain uses that would alter or destroy the habitat (including: botanical surveys will be required prior to issuing use permits, certain routes will be closed through a route designation process, certain areas may be fenced if needed to protect the species, lands will be withdrawn from mineral entry to limit future exploration, and restrictions on casual use mining will be developed as necessary), and measures to restore habitat that has already been impacted (closed routes will be signed as such, and roadbeds will be vertically mulched).

The second criterion is whether the plan provides assurances that the conservation management strategies and actions will be implemented. As the primary Federal land manager for the lands that support *A. jaegerianus* populations in the proposed Coolgardie unit and a portion of the proposed Paradise unit, the Bureau is directed by section 7(a)(1) of the Act to ''utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species.'' In addition, the Bureau's own national and State policies (Bureau 1996, 2001) include the objective to conserve listed species and the ecosystems on which they depend. The plan also includes an implementation schedule for conservation measures to be taken; monitoring includes an annual review of implementation of the measures undertaken, and tracking the progress of land acquisition within the ACEC boundaries.

The third criterion is whether the plan provides assurances that the conservation strategies and measures will be effective. We believe the measures that will be implemented by the Bureau will be effective because the primary strategy to conserve *A. jaegerianus* is to ensure that the quality of its habitat is maintained by avoiding future impacts. Based on this analysis of the three criteria, we have found that the Bureau's WMP provides for the management that is needed to conserve *A. jaegerianus* in these two areas and under 3(5)(A) of the Act, we are not designating as critical habitat these BLM areas. To the extent that these areas meet the definition of critical habitat pursuant to section 3(5)(A)(i)(II), we are excluding the Coolgardie unit and a portion of the Paradise unit that were proposed for critical habitat, totaling 9,627 ac (3,896 ha), from final critical habitat designation under section 4(b)(2) as discussed below.

In the proposed critical habitat designation, approximately 4,427 ac (1,792 ha) of private lands were included. The amount of private lands within the three proposed critical habitat units was as follows: Goldstone-Brinkman unit 193 ac (78 ha); Paradise unit 607 ac (246 ha); Coolgardie unit 3,714 ac (1,503 ha). These private lands are also being excluded from critical habitat because most of these lands will fall under the management of DOD or the Bureau over time. As part of the proposal to expand training lands on Fort Irwin included in the 2004 consultation with the Service, DOD has planned to purchase parcels from Catellus Corporation, a real estate company that is assisting with the transfer of parcels previously owned by Santa Fe Railroad. Catellus parcels were located within the expansion area as well as on Bureau lands. As of February 2005, the following acquisitions of Catellus land have already been completed by DOD: 100 percent of those in the Goldstone-Brinkman unit; 33 percent of those in the Paradise unit, and 67 percent of those in the Coolgardie unit. In 2005, DOD will continue with the acquisition of non-Catellus private lands from willing sellers within the boundaries of the two ACECs on Bureau lands.

Federal and other lands may also be excluded from critical habitat designation based on section 4(b)(2) of the Act. An area may be excluded from critical habitat if it is determined, following an analysis of relevant impacts, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We are excluding Bureau lands in the proposed Paradise and Coolgardie units, and private lands within the proposed units, under section 4(b)(2) of the Act. The analysis, which led us to the conclusion that the benefits of excluding these areas exceed the benefits of designating them as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The benefits of inclusion are low. If these areas were designated as critical habitat, any actions the Bureau proposed to approve, fund, or undertake which might destroy or adversely modify the critical habitat would require a consultation with us. If the action affects an area occupied by the plants, consultation is required even without the critical habitat designation. As indicated above, these units are each occupied by the listed plant, so consultation on BLM's activities on the excluded lands will be required even without the critical habitat designation. Further, if a consultation on adverse modification were to occur after designating critical habitat, since Bureau's plan adequately provides for the conservation of habitat for this species, the benefit from additional consultation is likely also to be minimal. We are consulting on the WMP and anticipate that the Bureau's plan will provide for the conservation for the species. This is because the conservation measures included in the final West Mohave Plan to conserve *A.*

jaegerianus, detailed above, were a key factor that was considered in the development of the WMP. Under the Ninth Circuit judicial opinion (*Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*), critical habitat designations may provide greater benefits to recovery of a species than previously believed, but it is not possible to quantify these benefits at this time.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas through the proposed rule and request for public comments. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. However, we believe that this educational benefit has largely been achieved because the DOD-sponsored surveys for *Astragalus jaegerianus* in 2001 provided the basis for the Bureau's proposal to establish the Coolgardie and Paradise ACECs (included in the West Mojave Plan) for the purposes of conserving the species. Furthermore, private landowners and users of the Bureau lands in these areas have had the opportunity to participate in the planning process for the West Mojave Plan for over a decade, and thus have been made aware of the presence of *A. jaegerianus* and the importance of this habitat to its conservation. Therefore, we believe the education benefits, which might arise from a critical habitat designation here, have already been generated.

In summary, we believe that a critical habitat designation for this plant species would provide virtually no additional Federal regulatory benefits. Because almost all of the proposed critical habitat is Federal land occupied by the species, the Bureau must consult with the Service over any action it undertakes, approves, or funds which might impact the *Astragalus jaegerianus.* The additional educational benefits, which might arise from critical habitat designation, are largely accomplished through the proposed rule and request for public comment that accompanied the development of this regulation, and the proposed critical habitat is known to the Bureau. Furthermore, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to recovery of a species than was previously believed, but it is not possible to quantify this at present.

(2) Benefits of Exclusion

The Bureau commented that critical habitat designation may not be necessary or appropriate given the extensive conservation actions it has included in the WMP, including establishment of the Paradise and Coolgardie ACECs and the conservation measures that will be implemented to protect the habitat of *Astragalus jaegerianus.* Based on our review of the WMP conservation measures, detailed above, we agree with the Bureau that the measures it is undertaking are sufficient to provide for the long-term conservation of the species in these two areas, and that little additional benefit would be provided by designating critical habitat on Bureau lands.

It will benefit the Bureau, and private parties seeking permits and approvals from the Bureau to exclude these areas from designation. Existing conservation measures are already being undertaken for the species, and thus without a designation, because these measures will provide long-term conservation benefits for the species, designating critical habitat in theses areas would require an additional administrative burden, through requiring consultation on the critical habitat that is unlikely to provide additional protection to that already provided in the WMP.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Because the *Astragalus jaegerianus* habitat identified on Bureau lands in the proposed Paradise and Coolgardie units does provide the primary constituent elements and requires special management considerations or protection, it was proposed for designation as critical habitat. However, because all of the actions that the Bureau has proposed for these lands in the WMP are focused on providing for the long-term conservation of *Astragalus jaegerianus* and provide benefits that exceed those that would arise from the designation of critical habitat (because the WMP provides positive conservation measures), we have determined that the benefits of exclusion of these Bureau lands from the critical habitat designation outweigh the benefits of the designation and therefore we are excluding these lands under section 4(b)(2) of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

Exclusion of the Bureau lands in the proposed Paradise and Coolgardie critical habitat units will not result in extinction of the species. We are currently consulting with the Bureau on the WMP, which includes the establishment of the Paradise and Coolgardie ACECs. Although the consultation is not complete, we believe that all of the actions that the Bureau will be undertaking in these two areas will contribute to the conservation of the species, and would not cause jeopardy to the species. Any additional actions by the Bureau which might adversely affect the species must undergo a consultation with the Service under the requirements of section 7 of the Act.

Relationship of Critical Habitat to Lands Managed by the Department of Defense (DOD)

We have excluded all DOD lands (including proposed critical habitat currently leased to NASA) at Fort Irwin under section 4(b)(2) of the Act for military readiness and national security. DOD requested that all Fort Irwin lands be excluded for national security. Of lands currently leased to NASA from DOD, a 996-acre inholding was proposed as critical habitat that lies completely within the boundaries of Fort Irwin. These lands include approximately 600 acres within the Goldstone Conservation Area that is managed by DOD for the benefit of *Astragalus jaegerianus*, further supporting our exclusion under section 4(b)(2) of the Act. Because the INRMP has not yet been completed, we did not consider DOD lands for non-inclusion under Section 4(a)(3)(B). We provide greater explanation below.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an INRMP. Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended the Act, under Section 4(a)(3)(B), to address the relationship of INRMPs to critical habitat. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. Section 4(a)(3)(B) of the Act states that the Secretary shall not designate as critical habitat any lands controlled by the Department of Defense, or designated for its use, that are subject to an INRMP if the Secretary

determines that the plan provides a benefit to the species for which critical habitat is being proposed for designation. The DOD specifically requested that we exclude Fort Irwin from critical habitat based on this exclusion, and we worked closely with DOD to revise its draft INRMP over the last year. However, because DOD has not completed its INRMP for Fort Irwin, these DOD lands do not meet the requirements for non-inclusion under Section 4(a)(3)(B).

Military lands may be excluded from critical habitat designation based on section 4(b)(2) of the Act. An area may be excluded from critical habitat if we determine, following an analysis of relevant impacts including the impact to national security, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. DOD further requested the exclusion of all lands in Fort Irwin under section 4(b)(2) based on national security concerns. After conducting the requisite 4(b)(2) analysis under section, we have excluded all DOD lands at Fort Irwin (the Goldstone-Brinkman and Paradise units) under section 4(b)(2) of the Act for military readiness and national security. The analysis, which led us to the conclusion that the benefits of excluding these areas exceed the benefits of designating them as critical habitat, and will not result in the extinction of the species, follows.

(1) Benefits of Inclusion

The benefits of inclusion are low. Since the Fort Irwin units are all occupied by *Astragalus jaegerianus*, DOD must already consult with the Service regarding any activities on these lands that may affect the species. In other words, consultation would be required even without critical habitat designation. Under the *Gifford Pinchot* decision, critical habitat may provide greater recovery benefits to species than was previously believed, but it is not possible to quantify this at present. However, we have already consulted with and provided technical assistance to the Army relative to this expansion area. The largest aggregations of plants on these lands will be protected (*see* discussion above), and not subject to activities which would likely adversely affect the ability of the conservation areas to contribute to the recovery of the species.

Another possible benefit of a critical habitat designation in general is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. In this case the primary land owner is DOD, and we believe that this educational benefit has largely been achieved because we have been coordinating for many years with DOD on its land management programs and its proposal to expand training activities. Based on these coordinating efforts, we believe that DOD is very aware of the conservation needs of Astragalus jaegerianus. For example, DOD sponsored the surveys for Astragalus jaegerianus in 2001 that provided the basis for the proposed critical habitat designation. Therefore, we believe the education benefits, which might arise from a critical habitat designation here, have already been generated.

(2) Benefits of Exclusion

The Army has commented that critical habitat on Fort Irwin would result in substantial economic and military readiness impact. The Army believes that critical habitat would impact their ability to use the expansion lands for military training because such designation could separate entirely the western expansion areas from the installation and in the Army's opinion critical habitat ''does not allow any means of using the land for training without violating the critical habitat that would be designated.'' If critical habitat were to have such an effect, it might require the Army to relocate its training facilities. The Army commented that startup costs to establish a brigade-sized force-on-force Combat Training Center in another location would cost $830 million, and as much as $10 billion to improve an existing installation so that it could support the training mission.

If these impacts were to occur, the benefits of excluding the installation from critical habitat would be high. The Service defers to the Army's identification of specific credible military readiness or national security impacts. Further, critical habitat would require additional administrative expenditures for consultation activities required by the designation for Fort Irwin (and the DOD lands leased to NASA). Since Fort Irwin is already working to conserve the species and habitat on its property and proposing measures that will conserve species and habitats, it is unlikely that the designation of critical habitat would provide additional benefits to the habitat through these additional consultations.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

Because the *Astragalus jaegerianus* habitat identified on Fort Irwin lands proposed for military training does provide the primary constituent elements and requires special management considerations or protection, it was proposed for designation as critical habitat. However, because the military has commented that critical habitat for *A. jaegerianus* had the potential to disrupt their critical national defense mission, we have determined that the benefits of exclusion of critical habitat at Fort Irwin outweigh the benefits of the designation and therefore we are excluding these lands under section 4(b)(2) of the Act. In addition to national security concerns, NASA expressed concern that creation of critical habitat on their lands leased from Fort Irwin would severely limit NASA's ability to develop cutting edge space communications technology. Furthermore, management is being provided in these areas to provide for species conservation.

(4) Exclusion Will Not Result in Extinction of the Species

The exclusion of the DOD lands on Fort Irwin will not result in extinction of the species. We have already consulted with DOD on its proposal to expand military training in the expansion area and made the determination that this action would not cause jeopardy to the species (see Comment 6). Any additional actions by DOD which might adversely affect the species must undergo a consultation with the Service under the requirements of section 7 of the Act. The exclusions leave these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical Habitat Designation

Because all three critical habitat units that were proposed were excluded from final designation, we are designating zero acres (0 ac) (zero hectares (0 ha) of critical habitat in this final rule for *Astragalus jaegerianus* in San Bernardino County, California. Congress envisioned that there would be circumstances where no critical habitat would be designated (Congressional Research Service 1982).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat.

Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law.

Activities on Federal lands that may affect *Astragalus jaegerianus* will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species, and actions on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Though we have not designated any areas as critical habitat in this final rule, we note Federal actions may jeopardize the continued existence of the species.

We recognize that those areas included in the proposed designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For this reason, we want to ensure that the public is aware that the critical habitat designation process does not signal that habitat outside the proposed designation is unimportant or may not be required for the species' conservation. Any areas where *Astragalus jaegerianus* occurs will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

As discussed previously in this rule, we are consulting with both the Army and the Bureau on activities that are being proposed on their lands. We have completed consultation with the Army and continue to coordinate with them on its proposed addition of training lands on NTC (Charis 2003). We are also consulting with the Bureau as the lead Federal agency on the WMP (Bureau 2003).

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit, pursuant to section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. The Superior-Cronese Critical Habitat Unit for the desert tortoise (*Gopherus agassizii*), a species that is listed as threatened under the Act, overlaps in range with *Astragalus jaegerianus* in a portion of the Brinkman-Montana, Paradise, and Coolgardie populations of the species. Although we anticipate that most of the activities occurring on private lands within the range of *A. jaegerianus* will eventually be included under the umbrella of the HCP to be prepared by the County of San Bernardino, there may be activities proposed for private lands that either need to be completed prior to the approval of the WMP's HCP, or there may be a proposed activity that is not covered by the HCP, and therefore may require a separate habitat conservation plan.

If you have questions regarding whether specific activities would require consultation under section 7 of the Act, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232 (telephone 503/231–6131; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial

data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the potential economic impacts of designating critical habitat for *Astragalus jaegerianus* was prepared and was made available for public review on December 8, 2004 (69 FR 70971). This analysis considered the potential economic effects of designating critical habitat as well as the protective measures taken as a result of the listing of *A. jaegerianus* as an endangered species, and other Federal, State, and local laws that aid habitat conservation in areas designated as critical habitat. However, because the Service has not designated any lands as critical habitat for *A. jaegerianus* the economic impact within the final designation is zero.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (*see* **ADDRESSES** section) or by download from the Internet at *http://ventura.fws.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this document is not a significant rule in that it will not raise novel legal and policy issues, and it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. This action was submitted to the Office of Management and Budget (OMB); however, OMB declined to review the proposed rule. We prepared an economic analysis of this action and used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Astragalus jaegerianus*. However, because we are not designating any critical habitat, we will not be submitting the final rule to OMB for review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. Based on the information that is available to us at this time, we are certifying that this designation of critical habitat will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at *http://www.sba.gov/size/*), which the RFA requires all federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, the draft economic analysis considered the types of activities that might trigger regulatory impacts if critical habitat were to be designated as proposed. However, because zero acres (0 ac (zero ha)) of critical habitat for *Astragalus jaegerianus* are being designated with this final rule, we are certifying that this rule will not have a significant economic impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

Under the SBREFA (5 U.S.C. 804(20), this rule is not a major rule. Based on the effects identified in the economic analysis, we believe that this critical habitat designation of zero acres (0 ac (zero ha)) will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographical regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. None of these criteria are relevant to this analysis because we are designating zero acres (0 ac (zero ha)) of critical habitat. Nevertheless, based on the economic analysis, the likelihood of any energy-related activity occurring within the zero acres (0 ac (zero ha)) of designated critical habitat is minimal for the following reasons: (1) There are no transmission power lines identified on the what we originally proposed as critical habitat, and (2) there are no energy extraction activities (Bureau of Land Management 1980). Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty

arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of zero acres (0 ac (zero ha)) of critical habitat in areas currently occupied by *Astragalus jaegerianus* would have little incremental impact on State and local governments and their activities. This is because the zero acres (0 ac (zero ha)) of critical habitat occurs to a great extent on Federal lands managed by the Department of Defense and the Bureau of Land Management. Less than 15 percent occurs on private lands that would involve State and local agencies, and the amount of private lands continues to diminish as parcels are purchased by DOD.

Even though zero acres (0 ac (zero ha)) of critical habitat are designated, the process of identifying proposed critical habitat may have some benefit to State and local governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than making them wait for case-by-case section 7 consultation to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating zero acres (0 ac (0 ha)) critical habitat in accordance with the provisions of the Endangered Species Act. The proposed rule used standard property descriptions and identified the primary constituent elements within the proposed designated areas to assist the public in understanding the habitat needs of *Astragalus jaegerianus*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits (Fish & Wildlife Service Forms 3–200–55 and 3–200–56) are covered by existing OMB Control No. 1018–0094, which expires on July 31, 2004. Detailed information for Act documentation appears at 50 CFR 17. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act of 1969 in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S Ct. 698 (1996)). This final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to coordinate with federally recognized Tribes on a Government-to-Government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus jaegerianus*. Therefore, no tribal lands were proposed as critical habitat for *A. jaegerianus*.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644–1766).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

■ Accordingly, the Service hereby amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for ''*Astragalus jaegerianus*'' under ''FLOWERING PLANTS,'' to read as follows:

17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS.							
*	*	*	*	*	*		*
Astragalus jaegerianus.	Lane Mountain milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	647	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.96(a), add critical habitat for *Astragalus jaegerianus*, in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch)

(1) Lands proposed for critical habitat, but excluded under 4(b)(2) and exempted under 3(5)(A) of the Act, consists of the mixed desert scrub community within the range of *Astragalus jaegerianus* that is characterized by the following primary constituent elements:

(i) Shallow soils derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently soils derived from diorite or gabbroid bedrock and, at one location, granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(ii) The highly diverse mixed desert scrub community that includes the host shrubs within which *Astragalus jaegerianus* grows, most notably: *Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* ssp. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*, and *Salazaria mexicana*.

(2) Critical Habitat Map Units.

Because zero acres (0 ac) of critical habitat are being designated, no critical habitat maps are provided here.

Dated: April 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–6920 Filed 4–4–05; 3:01 pm]

BILLING CODE 4310–55–P

Federal Register

Friday,
April 8, 2005

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 92

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2005 Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AT77

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2005 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2005 season. This final rule prescribes frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means that would be excluded from use. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations are intended to provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes regulations that start on April 2, 2005, and expire on August 31, 2005, for the subsistence harvest of migratory birds in Alaska.

DATES: Amendments to subparts A and C of 50 CFR part 92 become effective April 8, 2005. Amendments to subpart D of 50 CFR part 92 are effective April 2, 2005, through August 31, 2005.

ADDRESSES: The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503, or go to *http://alaska.fws.gov/ambcc/index.htm.*

SUPPLEMENTARY INFORMATION:

Background

What Events Led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited all commercial bird hunting and specified a closed season on the taking of migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Has the Amended Treaty Accomplished?

The major goals of the amended treaty with Canada were to allow traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada provides a means to allow permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol set the geographic baseline with lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands as the initial subsistence harvest areas.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when we published in the **Federal Register** (65 FR 16405) the Notice of Decision: ''Establishment of Management Bodies in Alaska to Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a subsistence migratory bird harvest.

The next step established the first subsistence migratory bird harvest system. This was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21, and 92 that created the first annual harvest regulations for the 2003 subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, July 21, 2003, and April 2, 2004, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

On December 20, 2004, we published a proposed rule in the **Federal Register** (69 FR 76362) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska, for the 2005 season. We received written responses from two entities. One of the responses was from a Co-management Council regional management body, and the other was from a nongovernmental organization.

This rulemaking is necessary because the migratory bird harvest season is closed unless opened and the regulations governing subsistence

harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held a meeting in April 2004, to develop recommendations for changes effective for the 2005 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 28 and 29, 2004, for action.

This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during 2005. This rule lists migratory bird species that are open or closed to harvest, as well as season openings and closures by region. It also explains minor changes in the methods and means of taking migratory birds for subsistence purposes. We have amended 50 CFR 92.5 by adding three new communities to the list of included areas, and corresponding harvest areas and season dates to 50 CFR 92.33.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Service has an emergency closure provision (50 CFR 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on the five criteria set forth in § 92.5(c). These communities included: Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham and Nanwalek, Tyonek and Hoonah (populations totaling 2,766). For 2005, we added three additional communities for glaucous-winged gull egg gathering only. These southeastern communities included: Craig, Hydaburg, and Yakutat, with a combined population of 2,459. These new regions would increase the percentage of the State population included in the subsistence bird harvest to only 14 percent.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, *e.g.*, Yukon-Kuskokwim Delta. Continuation of this monitoring would enable tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey Information Collection Forms to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. In the July 31, 2003, **Federal Register** (68 FR 44961), we published a notice that the Alaska Subsistence Harvest Survey Information Collection Forms were submitted to OMB for approval under the Paperwork Reduction Act, with a 30-day public comment period. OMB approved the information collection on October 2, 2003, and assigned OMB control number 1018–0124, which expires on October 31, 2006.

How Did the Service Develop the Methods and Means Prohibitions, and What Are the Changes for 2005?

In development of the initial regulations (68 FR 6697), the Co-management Council encouraged the Service to adopt the existing methods and means prohibitions that occur in the Federal (50 CFR 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations. We included some exceptions to the Federal regulations in the initial regulations and also in this proposed rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new proposed traditions. In this rule, we have incorporated the Bering Strait/Norton Sound region's request to add St. Lawrence Island to the list of areas where an exception allows the use of live decoys to harvest auklets.

How Did the Service Decide the List of Birds Open To Harvest and What Are the Changes for 2005?

We believed that it was necessary to develop a list of bird species that would be open to subsistence harvest. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska. The original intent was for the list to be reviewed by the regional management bodies as a checklist. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season.

Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the take of an unlisted bird.

To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Also, the scientific and corresponding common names of birds are constantly being adjusted by ornithologists, making it difficult to translate these taxonomic changes into the traditionally used Native bird names. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list open to harvest until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-management Council initially decided to call this list ''potentially harvested birds'' versus ''traditionally harvested birds'' because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list ''subsistence birds'' to cover the birds open to harvest.

The ''customary and traditional use'' of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The primary source of quantitative data on customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into

''large shorebird'' and ''small shorebird'' categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases.

Based on conservation concerns, in this rule we closed the harvest of tundra swans in Units 9(D) and 10 starting in 2005. This decision was made to protect a small resident population segment of fewer than 500 tundra swans in the Izembek National Wildlife Refuge area. This small segment of the Pacific population is nonmigratory and appears to be morphologically distinct. Breeding pair surveys indicate that the local population has declined steadily over the past two decades and recruitment into the population is low.

At the request of the North Slope Borough Fish and Game Management Committee, the Co-Management Council recommended adding a provision to allow subsistence use of yellow-billed loons inadvertently caught in subsistence fishing (gill) nets on the North Slope. Justification given by the proponent was that yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. The Service Regulations Committee met on July 29, 2004, and proposed to set a maximum of 20 yellow-billed loons inadvertently caught annually in the North Slope Region. Individual reporting to the North Slope Borough Department of Wildlife will be required by the end of the season. In addition, the North Slope Borough is planning to ask fishermen, through announcements on the radio and personal contact, to report all entanglements of loons to better estimate the levels of injury or mortality caused by gill nets. This provision to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets is subject to annual review and renewal as part of 50 CFR part 92's Subpart D—Annual Regulations Governing Subsistence Harvest.

How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes. It was published in the **Federal Register** on February 6, 2003 (68 FR 6179). The BCC list identifies bird species at risk because of inherently small populations, restricted ranges, severe population declines, or imminent threats. The species listed need increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended (16 U.S.C. 2901–2912). Section 13(a)(3) of the FWCA (16 U.S.C. 2912(a)(3)) requires the Secretary of the Interior through the Service, to ''identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).''

The Co-management Council will continually review the list of subsistence birds. As appropriate, the Council will elevate hunter awareness of species that may have small or declining populations in an effort to directly involve subsistence hunters in conserving these vulnerable species.

Response to Public Comments

Only the Region Specific Regulations section of the proposed rule was addressed by commenters.

Section 92.33 Region Specific Regulations

Comment: One respondent expressed strong opposition to how the migratory bird subsistence harvest is being managed in the Delta Junction portion of the Interior Region. The commenter explained that the agricultural fields were mostly created in the 1970s and so hunting waterfowl in these fields should not be considered customary and traditional. The respondent requested that the harvest be closed in Unit 20(D) or at least that portion of Unit 20(D) south of the Tanana River.

Service Response: A similar proposal has been received to change the 2006 harvest regulations and will be discussed with a recommendation subsequently made by the Co-Management Council at their May 2005 meeting. Since this issue is already in the system to be discussed, we have decided to defer any action until after receiving a Co-Management Council recommendation.

Comment: One commenter proposed to amend the 2005 regulations to close the season for black brant on August 16 versus August 31, only in the Cold Bay area, specifically Moffet and Glazenap lagoons, including Norma Bay and Applegate Cove. The commenter supported their proposal by describing an occurrence in the 2004 season in which two subsistence hunters harvested waterfowl, including black brant, in a way that was inconsistent with the community ethic of traditional sharing and taking only what was needed to satisfy subsistence needs.

Service Response: The proposed response to this incident was suggested by a regional management body of the Co-Management Council; however, the entire Co-Management Council was not given the opportunity to discuss and make a recommendation on the proposed regulatory action. We have decided to take no regulatory action for the 2005 season and will defer continued discussion until the May 2005 Co-Management Council meeting.

Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. However, for this rule, we are using the ''good cause'' exemption under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately because the amended migratory bird treaty protocol allows for an April 2 opening of the subsistence harvest season. To limit negative impacts on the subsistence users, we need to open the harvest as close as possible to the originally agreed-upon opening date.

Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan and Russia and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), that implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this action is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities and therefore will

have minimal economic or environmental impact. This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: First, participants receive the consumptive value of the birds harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life. The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled ''Subsistence Food Harvests in Rural Alaska, and Food Safety Issues'' (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of $6 million. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-Management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-Management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405, March 28, 2000), we identified 12 partner organizations (Alaska Native non-profits and local governments) to be responsible for administering the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-Management Council and regional management body's meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-Management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018–0124, which expires on October 31, 2006. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of Section 3 of the Order.

Takings

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources

throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249, November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of the Act'' and shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *'' Consequently, we consulted with the Anchorage Fish and Wildlife Field Office of the Service to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of Spectacled or Steller's Eiders or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included in the Biological Opinion on the Effects of the Proposed 2005 Spring and Summer Subsistence Harvest of Birds on the Threatened Steller's and Spectacled Eiders (dated March 1, 2005).

The consultation concluded that the 2005 regulations are not likely to jeopardize the continued existence of either the Steller's or Spectacled Eider. Additionally, any modifications resulting from this consultation to regulatory measures previously proposed are reflected in the final rule.

The complete administrative record for this consultation is on file at the Anchorage Fish and Wildlife Field Office and is also available for public inspection at the address indicated under the caption **ADDRESSES.**

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the First Legal Spring/Summer Harvest in 2005,'' issued August 15, 2004, with a Finding of No Significant Impact issued March 2, 2005. Copies are available from the address indicated under the caption **ADDRESSES.**

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently, it is not expected to significantly affect energy supplies, distribution and use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 2. In subpart A, amend § 92.5 by revising paragraph (a)(2) introductory text and adding paragraph (a)(3) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(a) * * *

(2) Based on petitions for inclusion recommended by the Co-management Council in 2003, the Service added the following communities to the included areas under this part starting in the 2004 harvest season:

* * * * *

(3) Based on petitions for inclusion recommended by the Co-management Council in 2004, the Service added the following communities to the included areas under this part starting in the 2005 harvest season:

(i) Southeast Region—Craig, Hydaburg, Yakutat.

(ii) [Reserved]

Subpart C—General Regulations Governing Subsistence Harvest

■ 3. In subpart C, amend § 92.20 by revising paragraph (d) to read as follows:

§ 92.20 Methods and means.

* * * * *

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomede and St. Lawrence islands (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomede and St. Lawrence islands.);

* * * * *

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 4. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider (*Somateria fischeri*).

(2) Steller's Eider (*Polysticta stelleri*).

(3) Emperor Goose (*Chen canagica*).

(4) Aleutian Cackling Goose (*Branta hutchinsii leucopareia*)—Semidi Islands only.

(5) Tundra Swan (*Cygnus columbianus*)—Units 9(D) and 10 only.

(6) Yellow-billed Loon (*Gavia adamsii*)—except North Slope Region. (Requirements for harvest and reporting are described in § 92.33(g)(4).).

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Goose (*Branta hutchinsii minima*).

(2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

(a) Family Anatidae.

(1) Greater White-fronted Goose (*Anser albifrons*).
(2) Snow Goose (*Chen caerulescens*).
(3) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.
(4) Taverner's Cackling Goose (*Branta hutchinsii taverneri*).
(5) Aleutian Cackling Goose (*Branta hutchinsii leucopareia*)—except in the Semidi Islands.
(6) Cackling Goose (*Branta hutchinsii minima*)—except no egg gathering is permitted.
(7) Lesser Canada Goose (*Branta canadensis parvipes*).
(8) Tundra Swan (*Cygnus columbianus*)—except in Units 9(D) and 10.
(9) Gadwall (*Anas strepera*).
(10) Eurasian Wigeon (*Anas penelope*).
(11) American Wigeon (*Anas americana*).
(12) Mallard (*Anas platyrhynchos*).
(13) Blue-winged Teal (*Anas discors*).
(14) Northern Shoveler (*Anas clypeata*).
(15) Northern Pintail (*Anas acuta*).
(16) Green-winged Teal (*Anas crecca*).
(17) Canvasback (*Aythya valisineria*).
(18) Redhead (*Aythya americana*).
(19) Ring-necked Duck (*Aythya collaris*).
(20) Greater Scaup (*Aythya marila*).
(21) Lesser Scaup (*Aythya affinis*).
(22) King Eider (*Somateria spectabilis*).
(23) Common Eider (*Somateria mollissima*).
(24) Harlequin Duck (*Histrionicus histrionicus*).
(25) Surf Scoter (*Melanitta perspicillata*).
(26) White-winged Scoter (*Melanitta fusca*).
(27) Black Scoter (*Melanitta nigra*).
(28) Long-tailed Duck (*Clangula hyemalis*).
(29) Bufflehead (*Bucephala albeola*).
(30) Common Goldeneye (*Bucephala clangula*).
(31) Barrow's Goldeneye (*Bucephala islandica*).
(32) Hooded Merganser (*Lophodytes cucullatus*).
(33) Common Merganser (*Mergus merganser*).
(34) Red-breasted Merganser (*Mergus serrator*).
(b) Family Gaviidae.
(1) Red-throated Loon (*Gavia stellata*).
(2) Arctic Loon (*Gavia arctica*).
(3) Pacific Loon (*Gavia pacifica*).
(4) Common Loon (*Gavia immer*).
(5) Yellow-billed Loon (*Gavia adamsii*)—North Slope Region only. (Requirements for harvest and reporting are described in § 92.33(g)(4).).
(c) Family Podicipedidae.
(1) Horned Grebe (*Podiceps auritus*).
(2) Red-necked Grebe (*Podiceps grisegena*).
(d) Family Procellariidae.
(1) Northern Fulmar (*Fulmarus glacialis*).
(2) [Reserved].
(e) Family Phalacrocoracidae.
(1) Double-crested Cormorant (*Phalacrocorax auritus*).
(2) Pelagic Cormorant (*Phalacrocorax pelagicus*).
(f) Family Gruidae.
(1) Sandhill Crane (*Grus canadensis*).
(2) [Reserved].
(g) Family Charadriidae.
(1) Black-bellied Plover (*Pluvialis squatarola*).
(2) Common Ringed Plover (*Charadrius hiaticula*).
(h) Family Haematopodidae.
(1) Black Oystercatcher (*Haematopus bachmani*).
(2) [Reserved].
(i) Family Scolopacidae.
(1) Greater Yellowlegs (*Tringa melanoleuca*).
(2) Lesser Yellowlegs (*Tringa flavipes*).
(3) Spotted Sandpiper (*Actitis macularius*).
(4) Bar-tailed Godwit (*Limosa lapponica*).
(5) Ruddy Turnstone (*Arenaria interpres*).
(6) Semipalmated Sandpiper (*Calidris pusilla*).
(7) Western Sandpiper (*Calidris mauri*).
(8) Least Sandpiper (*Calidris minutilla*).
(9) Baird's Sandpiper (*Calidris bairdii*).
(10) Sharp-tailed Sandpiper (*Calidris acuminata*).
(11) Dunlin (*Calidris alpina*).
(12) Long-billed Dowitcher (*Limnodromus scolopaceus*).
(13) Wilson's Snipe (*Gallinago delicata*).
(14) Red-necked phalarope (*Phalaropus lobatus*).
(15) Red phalarope (*Phalaropus fulicaria*).
(j) Family Laridae.
(1) Pomarine Jaeger (*Stercorarius pomarinus*).
(2) Parasitic Jaeger (*Stercorarius parasiticus*).
(3) Long-tailed Jaeger (*Stercorarius longicaudus*).
(4) Bonaparte's Gull (*Larus philadelphia*).
(5) Mew Gull (*Larus canus*).
(6) Herring Gull (*Larus argentatus*).
(7) Slaty-backed Gull (*Larus schistisagus*).
(8) Glaucous-winged Gull (*Larus glaucescens*).
(9) Glaucous Gull (*Larus hyperboreus*).
(10) Sabine's Gull (*Xema sabini*).
(11) Black-legged Kittiwake (*Rissa tridactyla*).
(12) Red-legged Kittiwake (*Rissa brevirostris*).
(13) Ivory Gull (*Pagophila eburnea*).
(14) Arctic Tern (*Sterna paradisaea*).
(15) Aleutian Tern (*Sterna aleutica*).
(k) Family Alcidae.
(1) Common Murre (*Uria aalge*).
(2) Thick-billed Murre (*Uria lomvia*).
(3) Black Guillemot (*Cepphus grylle*).
(4) Pigeon Guillemot (*Cepphus columba*).
(5) Cassin's Auklet (*Ptychoramphus aleuticus*).
(6) Parakeet Auklet (*Aethia psittacula*).
(7) Least Auklet (*Aethia pusilla*).
(8) Whiskered Auklet (*Aethia pygmaea*).
(9) Crested Auklet (*Aethia cristatella*).
(10) Rhinoceros Auklet (*Cerorhinca monocerata*).
(11) Horned Puffin (*Fratercula corniculata*).
(12) Tufted Puffin (*Fratercula cirrhata*).
(l) Family Strigidae.
(1) Great Horned Owl (*Bubo scandiacus*).
(2) Snowy Owl (*Nyctea scandiaca*).

§ 92.33 Region-specific regulations.

The 2005 season dates for the eligible subsistence regions are as follows:
(a) Aleutian/Pribilof Islands Region.
(1) Northern Unit (Pribilof Islands):
(i) Season: April 2–June 30.
(ii) Closure: July 1–August 31.
(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):
(i) Season: April 2–June 15 and July 16–August 31.
(ii) Closure: June 16–July 15.
(3) Western Unit (Umnak Island west to and including Attu Island):
(i) Season: April 2–July 15 and August 16–August 31.
(ii) Closure: July 16–August 15.
(b) Yukon/Kuskokwim Delta Region.
(1) Season: April 2–August 31.
(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, is open to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 20 and July 22–August 31; egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′ S and south of the latitude line 70°45′ E to west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ S and north of the latitude line 70°45′ E to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders and April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders and June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons may be caught inadvertently in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently caught while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14.

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina, and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed in this paragraph also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) Gulf of Alaska Region.

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified in this paragraph (k).) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31 for that portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31 for that portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) Southeast Alaska

(1) Community of Hoonah (Harvest area: Lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 100.3]).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Pt. Riou] and coastal lands and islands bordering the Gulf of Alaska from Pt. Manby southeast to and including Dry Bay).

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

Dated: March 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–6987 Filed 4–7–05; 8:45 am]

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Federal Register

Friday,
April 8, 2005

Part VII

Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 93, et al.

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Finding of No Significant Impact and Affirmation of Final Rule; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, 95, and 98

[Docket No. 03–080–7]

RIN 0579–AB73

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Finding of No Significant Impact and Affirmation of Final Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of final rule.

SUMMARY: We are publishing a finding of no significant impact for a final rule concerning bovine spongiform encephalopathy minimal risk regions published January 4, 2005, and, based on that finding, we are affirming the provisions of the final rule. The finding of no significant impact is based on an environmental assessment that documented our review and analysis of potential environmental impacts associated with the final rule and our review of issues raised by the public regarding the environmental assessment. Together, the environmental assessment and our review of the issues raised provide a basis for our conclusion that the provisions of the final rule will not have a significant impact on the quality of the human environment and support our affirmation of the final rule.

DATES: The final rule published January 4, 2005 (70 FR 460), with a partial delay of applicability published March 11, 2005 (70 FR 12112), was effective March 7, 2005. This affirmation of the final rule is effective April 8, 2005.

ADDRESSES: The environmental assessment on which this finding of no significant impact is based may be accessed by any of the following methods:

- On the EDOCKET Web site at *http://docket.epa.gov/edkfed/do/EDKStaff CollectionDetailView?objectId=0b0007d48055a20d.*
- On the APHIS Web site at *http://www.aphis.usda.gov/lpa/issues/bse/bse.html.*
- In the APHIS Reading Room in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.
- You may request paper copies of the environmental assessment and the finding of no significant impact by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the titles of these documents when requesting copies.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Director, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2003, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** and requested comment on a proposed rule (68 FR 62386–62405, Docket No. 03–080–1) to amend the regulations regarding the importation of animals and animal products to recognize a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy (BSE) into the United States via live ruminants and ruminant products, and to add Canada to this category. The proposed rule also included provisions for the importation of certain live ruminants and ruminant products and byproducts from Canada under certain conditions. Also on November 4, 2003, we made available for public comment an environmental assessment (EA) regarding the potential impact on the quality of the human environment due to the importation of ruminants and ruminant products and byproducts under the conditions of the proposed rule. We carefully considered all comments that addressed the EA, along with those that addressed the proposed rule itself.

On January 4, 2005, we published in the **Federal Register** (70 FR 460–553, Docket No. 03–080–3) a final rule to the proposed rule, to become effective March 7, 2005.[1]

Also in the January 4, 2005, issue of the **Federal Register**, we published a notice (70 FR 554, Docket No. 03–080–4) announcing the availability of, and requesting comments on, a final EA regarding the potential impact on the quality of the human environment due to the importation of ruminants and ruminant products and byproducts from Canada under the conditions specified in the final rule. APHIS' review and analysis of the potential environmental impacts associated with those importations were documented in the final EA, titled ''Rulemaking to Establish Criteria for the Importation of Designated Ruminants and Ruminant Products from Canada into the United States, Final Environmental Assessment (December 2004).'' We announced that the EA would be available to the public for review and comment until February 3, 2005.

We became aware, however, that the version of the EA that was made available on January 4, 2005, contained some transcription errors that resulted in the omission of several references to an updated APHIS risk analysis regarding the final rule, as well as the incorrect formatting of several source citations. We corrected those errors and, on January 21, 2005, published a notice in the **Federal Register** (70 FR 3183–3184, Docket No. 03–080–5) announcing the availability to the public of the corrected EA and extending the comment period on the EA until February 17, 2005.

We reviewed and considered all issues raised by commenters on the final EA. Of the issues raised by the commenters, some addressed the potential effects of the rule on the environment, while others addressed issues unrelated to such potential effects. Most of these issues had been raised by commenters on the proposed rule and had been previously considered and addressed in our final rule and supporting analyses.

Additionally, shortly after issuance of the final rule, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R–CALF), filed a complaint challenging the rule in the United States District Court for the District of Montana. In that complaint, R–CALF raised several issues regarding the EA that it had not included in either its comments on the proposed rule or in any comment on the final EA. In addition, no other commenter on the EA raised those potential environmental impact issues. Nonetheless, we addressed those issues in our finding of no significant impact (FONSI), discussed below.

We carefully considered environmental issues throughout the rulemaking. Based on the EA and on our review of the comments received on the original and final EAs, on the proposed rule, and in litigation, we have determined that the provisions of our January 4, 2005, final rule will not

[1] On March 11, 2005, the Department published a document in the **Federal Register** (70 FR 12112–12113, Docket No. 03–080–6), effective March 7, 2005, that delayed until further notice the applicability of certain provisions of the final rule. On March 2, 2005, Judge Richard F. Cebull of the U.S. District Court for the District of Montana ordered that the implementation of the final rule is preliminarily enjoined.

significantly impact human health or the environment, and that there is no basis in the comments we received and the issues that have been raised to alter the rule. Therefore, we are affirming the final rule as published.

Our FONSI is included in this document under the heading ''Bovine Spongiform Encephalopathy: Minimal-Risk Regions and Importation of Commodities (Final Rule; APHIS Docket No. 03–080–3), Finding of No Significant Impact.'' The FONSI includes a discussion of the comments received on the final EA. The EA and FONSI may also be accessed by any of the means listed above under the heading **ADDRESSES**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities (Final Rule; APHIS Docket No. 03–080–3)

Finding of No Significant Impact

United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, Technical Trade Services, 4700 River Road, Unit 38, Riverdale, MD 20737

This finding concludes the environmental assessment process undertaken for the rulemaking, Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities (''MRR rule''). An environmental assessment (''EA''), dated October 2003, was prepared for this rulemaking and it was made available to the public for comment on November 4, 2003. Comments on the EA were received and carefully considered. A final EA was completed and it was made available to the public on January 4, 2005, for a 30-day comment period. On January 21, 2005, a corrected final EA was made available to the public and the comment period was extended for an additional 14 days until February 17, 2005. The corrected final EA had no changes or additions to the version issued on January 4, 2005, other than some specific references to the latest risk analysis for the MRR rule that had been inadvertently omitted from the final EA. This finding summarizes and incorporates by reference the final EA.

Thirteen comments were received in response to our request for comments on the final EA. One was submitted by a state farm bureau federation with certain specific suggestions. This comment counseled caution in implementing the rule for the following reasons. It pointed to the four confirmed cases of bovine spongiform encephalopathy (BSE) in cows of Canadian origin'particularly the most recent diagnosis in a cow that was determined to have been born after implementation of a feed ban in Canada—and recommended that USDA confirm that the Canadian feed ban is being effectively enforced before resuming imports of Canadian cattle under 30 months of age and beef from such younger cattle. Additionally, the comment requested that an effective feed ban have been in place in Canada for a full 8 years before cattle over 30 months of age, and meat from such cattle, are allowed to be imported into the United States. It recommended further review of Canada's surveillance program and asked whether the current level of surveillance in Canada is adequate. The comment supported the animal identification provisions in the rule and recommended that appropriate steps be taken to ensure that all imported cattle were slaughtered before 30 months of age. Finally, the comment noted concerns, which we believe are outside the scope of the environmental assessment, about consumer confidence, our ability to regain access to export markets, and potential impacts on producer returns.

One comment, filed by an individual consumer of beef products who asserted he was not associated with any cattle production or processing business, raised five concerns or issues. These included that there was no quantitative risk assessment in the EA, concern about the duration and effectiveness of Canada's feed ban, concern about the tissues defined as specified risk materials (SRMs) under international standards, concern that public health risk was not adequately analyzed in light of recent diagnoses of BSE in Canada and the levels of feed ban compliance and surveillance in that country, and, finally, a recommendation that an environmental impact statement be completed to study the effect of BSE and TSE disease agents in soil, water, air, and the food chain.

Eight comments—one from a South Dakota organization, one from an Oregon organization, and six from individuals, including an assistant state veterinarian—raised a generally similar array of concerns. The thrust of these eight comments is that the commenters believe the risk of introducing BSE into the United States weighs against implementation of the rule. The comments noted support for maintaining the current prohibitions on imports of live animals and beef products from Canada, concerns about the effect of importation into the United States of Canadian cattle and cattle products on U.S. export markets, concern about the effectiveness of the Canadian feed ban and the adequacy of Canada's surveillance program, concerns about feeding animal protein of any kind to cows or sheep, a recommendation for country-of-origin labeling, and support for testing for BSE all cattle of Canadian origin that are in the United States. Again, certain of these issues are outside the scope of the EA. Several of the comments also raised questions about the implications of the most recently confirmed BSE-positive animals in Canada on January 2 and January 11, 2005, including the fact that one of these animals was born shortly after implementation of the Canadian feed ban in 1997.

A comment from a pharmaceutical association noted the importance of animal-derived materials in numerous products. This comment was received on February 24, 2005, 7 days after the close of the extended comment period for the final EA. Nevertheless, because, as the commenter pointed out, it had commented in a timely fashion on the proposed rule and its EA comment was intended to update its recommendations based on recent developments, we will respond to this comment. The comment supported the need to revise what it termed the ''binary system'' of BSE classification of countries and the adoption of what it termed a science-based approach to identifying minimal-risk regions for BSE as outlined in the rule. The comment, therefore, supported implementation of the rule. It recommended permanently identifying cattle from Canada and distinguishing Canadian and U.S.-origin cattle for the sourcing of bovine raw materials, which would allow companies to make sourcing decisions to satisfy BSE regulatory requirements in the countries to which these companies would ship their products. The association supported the implementation of a national animal identification system.

One comment took issue with the notation in the final EA that alkaline hydrolysis tissue digesters were a preferred method of disposal for BSE-contaminated carcasses. It took issue with that conclusion and suggested the commenter's validated protocol and

process for enzymatic prion degradation was perhaps equally effective. We acknowledge this comment and would welcome more information and data regarding this technology. It is our view, however, that it does not raise an issue that requires discussion in this document. One comment urged the lifting of the prohibitions on camelids because camelids have no demonstrated history of being susceptible to any type of TSE and because these animals are not used for human consumption. We agree with this comment and note that the MRR rule so provided.

Of the issues raised by the commenters, many concerned topics other than the potential effects of the rule on the environment (for example, comments regarding country-of-origin labeling, market access, and consumer confidence). These issues had been raised by commenters on the proposed rule and were considered and addressed by APHIS in its final rule and supporting analyses. Likewise, most of the commenters who did address the potential effects of the rule on the environment raised issues that had already been raised and addressed at considerable length in the final rule and supporting analyses. This fact illustrates the substantial identity of the central animal and public health issues of the rule and the issues evaluated in the environmental assessments.

It is important to note that issues raised in relation to the two most recent BSE-positive cows in Canada on January 2 and January 11, 2005, will be discussed below. Certain commenters observed that these incidents would call into question the effectiveness and adequate duration of the Canadian feed ban. Because these incidents occurred either after or immediately before the publication of the final EA, we welcome the opportunity to respond in this document.

On January 4, 2005, APHIS issued a final rule to amend regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal-risk of introducing BSE into the United States by way of live ruminants and ruminant products and byproducts, and to add Canada to that category. (70 FR 460–553.) The final rule also established conditions for the importation of certain live ruminants and ruminant products and byproducts from minimal-risk regions. Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit or restrict the importation or entry of any animal, article, or means of conveyance, or use of any means of conveyance or facility, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. (7 U.S.C. 8303.) The MRR rule will regulate the importation of ruminants and ruminant products and byproducts from Canada in a manner that prevents the introduction of BSE into the United States.

The rule defines a BSE minimal-risk region as one that:

1. Maintains, and, in the case of regions where BSE was detected, had in place prior to the detection of BSE in an indigenous ruminant, risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease. Such measures include the following:

- Restrictions on the importation of animals sufficient to minimize the possibility of infected ruminants being imported into the region, and on the importation of animal products and animal feed containing ruminant protein sufficient to minimize the possibility of ruminants in the region being exposed to BSE;
- Surveillance for BSE at levels that meet or exceed recommendations of the World Organization for Animal Health (Office International des Epizooties or OIE) for surveillance for BSE; and
- A ruminant-to-ruminant feed ban that is in place and is effectively enforced.

2. In regions where BSE was detected, conducted an epidemiological investigation following detection of BSE sufficient to confirm the adequacy of measures to prevent the further introduction or spread of BSE, and continues to take such measures.

3. In regions where BSE was detected, took additional risk mitigation measures, as necessary, following the BSE outbreak based on risk analysis of the outbreak, and continues to take such measures.

These standards are based upon, and are consistent with, international guidelines issued by OIE. For a full analysis and discussion of these standards, see APHIS' November 4, 2003, proposed rule (68 FR 62388–62389) (please note that some revisions were made to the wording of the proposed standards in the final rule) and the update to our risk analysis.[2]

APHIS conducted a comprehensive examination and evaluation of all the relevant risk factors in determining whether Canada qualified as a BSE minimal-risk region. A complete discussion of this evaluation can be found in the risk analysis.[3] In summary, APHIS determined that Canada met the standards for a BSE minimal-risk region because:

1. Canada has implemented comprehensive, effective measures for preventing BSE introduction and the potential for spread within Canada in order to minimize the possibility that infected ruminants, ruminant products, byproducts, or contaminated feedstuffs enter the country. The potential for introduction of the BSE agent into Canada has been limited by import restrictions on meat-and-bone meal (MBM) and live animals. Canada's Animal Disease and Protection Regulations (1978) and Health of Animals Regulations (1991) prohibited importation of MBM from countries other than the United States and, later, from Australia and New Zealand. These rules were first initiated in response to foot-and-mouth disease and later extended to address BSE issues. Canada has not imported live cattle from the United Kingdom (UK) since 1990. In 1994, an import ban was imposed on all countries where BSE had been detected in native cattle, and from 1996 live cattle could only be imported from countries that Canada designated as free from BSE following a comprehensive risk assessment. After detection of BSE in an imported animal in 1993, Canada traced and destroyed and incinerated or repatriated all surviving cattle imported from the UK.

2. Canada has an adult cattle population of approximately 5.5 million cattle older than 24 months of age. The 2004 OIE Code, Appendix 3.8.4, references adult cattle populations as those greater than 30 months and recommends examining at least 300 samples per year from high-risk animals in a country with an adult cattle population of 5 million, or 336 samples per year in a country with an adult cattle population of 7 million. Even though the adult cattle population in Canada is defined as greater than 24 months of age and OIE defines it as greater than 30 months, Canada has met or exceeded this level of surveillance for the past 7 years, thus exceeding the OIE guidelines. Since 1992, the surveillance has been targeted surveillance, with samples obtained from adult animals exhibiting some type of clinical signs or considered high risk for other reasons that could be considered consistent with BSE. From January 2004 through March

[2] See ''Analysis of Risk-Update for the Final Rule: Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities, December 2004.'' pp. 2–5. This update can be viewed on the Internet at *http://www.aphis.usda.gov/lpa/issues/bse/bse.html.*

[3] Ibid, pp. 5–18.

2005, over 37,000 samples were obtained. Canadian Food Inspection Agency (CFIA) officials have stated that this surveillance program is designed to detect one case of BSE in one million adult cattle.

3. Since August 4, 1997, Canada has implemented a ruminant-to-ruminant feed ban that is comparable to that existing in the United States and prohibits the feeding of proteins from ruminant species to ruminant animals. Based on CFIA inspections since 2003, virtually 100 percent of Canadian rendering facilities are in compliance with the ruminant-to-ruminant feed ban requirements applicable to this industry. With regard to inspections of feed mills, CFIA reported that, for an annual inspection period of April to March, the fraction of mills reportedly in compliance was 92 percent, 99 percent, and 95 percent for 2002, 2003, and 2004, respectively.[4] CFIA has identified noncompliance of ''immediate concern'' in fewer than 2 percent of feed mills inspected during 2003–2004. Those instances of noncompliance of ''immediate concern'' are dealt with rapidly when identified. Noncompliance of ''immediate concern'' includes situations where direct contamination of ruminant feed with prohibited materials has occurred, as identified through inspections of production documents or visual observation, and where a lack of appropriate written procedures, records, or product labeling by feed manufacturers may expose ruminants to prohibited animal proteins. Accordingly, it is clear that Canada's feed ban is effective.

4. Canada conducted rigorous epidemiological investigations after the BSE cases were detected in May 2003 and December 2003 and after the detections in January 2005.[5] In all but the most recent detection, the cases were animals that were born before the implementation of the feed ban in 1997, with exposure assumed to occur prior to or near the time of the imposition of the feed regulations. The cow in the last detected case was born within a year after implementation of the Canadian feed ban. Although a specific source of infection was not identified, the most likely possibility was the introduction of a low level of infectivity into the animal feed supply originating from an infected animal imported from the UK in the period between 1982 and 1989. These investigations have resulted in the destruction and sampling of a large number of potentially exposed cattle, and results from all testing have yielded no further evidence of infection. CFIA has traced and destroyed the majority of surviving cattle that were birth cohorts of each of the cases of Canadian origin.

5. CFIA imposed new regulations to further strengthen its safeguards against BSE. Measures taken included requiring the removal of bovine SRMs; enhancing enforcement activities associated with the existing cattle identification system; and increasing the level of BSE testing.

Canada has provided comprehensive information throughout this rulemaking regarding its BSE status and the actions it has taken to protect animal and public health and food safety. The most recent Canadian status update can be accessed through the CFIA 2 Web site at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/200503canadae.shtml.*

In summary, the essential factors that led us to conclude that Canada qualified as a BSE minimal-risk region include longstanding Canadian import restrictions, an effective ban on the feeding of ruminant protein to ruminants, the quality of Canada's surveillance and monitoring program, and other measures, such as the required removal of SRMs from cattle at the time of slaughter and enhanced enforcement of Canada's existing mandatory cattle identification system.

APHIS has concluded that the animal and public health measures that Canada has in place to prevent BSE, combined with existing U.S. domestic safeguards and additional safeguards provided in the final rule, provide the utmost protection to U.S. consumers and livestock. With respect to Canadian cattle, the MRR rule will allow the importation of:

- Bovines, for immediate slaughter, or for feeding, as long as they are slaughtered at less than 30 months of age;
- Meat from bovines; and
- Certain other products and byproducts, including bovine livers and tongues, gelatin, and tallow.

The final rule provides the following additional requirements for live Canadian feeder cattle that will ensure they are slaughtered before they reach 30 months of age:

- Feeder cattle must be permanently marked with a brand to identify the BSE minimal-risk region of origin before entering the United States. Feeder cattle exported from Canada will be branded with ''C/AN'';
- Cattle must be individually identified with an ear tag before entering the United States. This ear tag allows the animal to be traced back to the premises of origin (birth herd);
- Information must be included on the cattle's animal health certification, relating to animal identification, origin, destination, and responsible parties;
- Cattle must be moved to feedlots in sealed containers and cannot go to more than one feedlot; and
- SRMs will be removed from Canadian cattle slaughtered in the United States in accordance with FSIS regulations.

Based on our risk analyses, APHIS concluded that the cumulative effect of all of the measures in place in Canada and the United States, and the additional measures imposed by the final rule, is an extremely effective set of interlocking, overlapping and sequential barriers to the introduction and establishment of BSE in the United States.[6] The preceding discussion and conclusions provide the foundation for the finding of no significant impact described below.

The final rule was scheduled to become effective on March 7, 2005. On February 9, 2005, the Secretary of Agriculture announced that the provisions of the final rule allowing the importation of beef products from cattle over 30 months of age would be delayed.[7] On March 2, 2005, the United States District Court for the District of Montana issued a preliminary injunction that enjoined implementation of the MRR rule.

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the purpose of an environmental assessment is to provide sufficient information and analysis to agency decision makers to allow them to determine whether the proposed agency action will have a significant effect on the human environment. If a determination is made that the action would have a significant effect on the human environment, the agency is obligated to prepare an environmental impact statement. If a determination is made that the action will not have a significant effect on the human environment, a finding of no significant impact is issued.

The two EAs issued for the MRR rule considered two alternatives: (1) The ''No

[4] Canadian Food Inspection Agency (CFIA). Memorandum from Dr. Brian Evans, Chief Veterinary Officer, to Dr. John Clifford, Deputy Administrator, VS, APHIS. July 30, 2004.

[5] Canadian reports of the investigations can be accessed at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/bseesbindexe.shtml.*

[6] See ''Analysis of Risk-Update for the Final Rule: Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities, December 2004.'' pp. 25–27.

[7] On March 11, 2005, APHIS published a notice in the **Federal Register** delaying the applicability of the provisions of the rule relating to beef products and byproducts from bovines 30 months of age or older (70 FR 12112).

Action'' alternative, which would maintain the continued regulatory prohibition of the importation of ruminants, ruminant products, ruminant by-products from Canada and from any other country or region that could eventually be classified as a BSE minimal-risk region pursuant to the rulemaking and (2) the preferred alternative, which will allow for the importation of certain ruminant products and by-products and certain ruminants, providing the country or region seeking recognition as a BSE minimal-risk region demonstrates that it meets the relevant factors consistent with standards recommended by the OIE.

The environmental issues involved in this rulemaking, including those raised in comments on the two EAs as well as in litigation, are discussed below.

A. The Degree to Which the Action May Affect Public Health or Safety

The introduction of BSE into the United States has the potential to affect both human and animal health. BSE, commonly known as ''mad cow disease,'' is a disease that belongs to a family of mostly very rare diseases known as TSEs. Cases of BSE in cattle were first reported in the UK in 1986. To date, over 95 percent of all known BSE cases worldwide have occurred in the UK. Within cattle herds, BSE is not contagious and does not spread from animal to animal. It is spread to cattle primarily through the consumption of animal feed containing protein from ruminants infected with BSE. In 1996, a new disease, variant Creutzfeldt-Jakob disease or vCJD, was detected in humans and linked to the BSE epidemic in cattle. Consumption of cattle products contaminated with the BSE agent is reported to be the cause of vCJD. Approximately 153 cases of vCJD have been identified worldwide and 95 percent of these cases have been linked to exposure in the UK. When compared with the significant number of cattle exposed to BSE, the relatively small number of cases of vCJD indicates a substantial species barrier that protects humans from widespread illness due to BSE exposure.

As previously discussed, the MRR rule amends APHIS' regulations to allow the importation of certain ruminants, ruminant products and by-products from regions that pose a minimal risk for BSE. The rule will preclude introduction of BSE into the United States and will ensure the protection of domestic livestock and the food supply. The MRR rule is fully consistent with the guidelines and recommendations of the OIE for trade in animals and animal products from BSE-affected countries.

In determining whether it was necessary to continue the prohibitions and restrictions on imports from Canada pursuant to the Animal Health Protection Act, APHIS analyzed the risks associated with such imports. The analysis is consistent with OIE guidelines and the internationally recommended components for animal health import risk analysis. The risk analysis drew on a number of sources of information, including: Previous analyses of risk conducted by APHIS; scientific literature; results of epidemiological investigations; data provided by the Canadian Government; a quantitative analysis of the risk of BSE in Canada; quantitative analyses of the consequences of BSE being introduced into the United States; measures implemented by USDA's Food Safety and Inspection Service (FSIS) and the U.S. Department of Health and Human Services' Food and Drug Administration (FDA) to protect against human exposure to the BSE agent in the United States; reports by international review teams; and the BSE guidelines adopted by the OIE. The determination to allow imports of certain Canadian ruminants and ruminant products was based on a thorough evaluation of the BSE risk in Canada, the potential for BSE infectivity to be introduced into the United States, the potential spread of BSE in cattle and possible human exposure if BSE infectivity were introduced into the United States, and the likelihood that BSE could become established in the United States.

A great deal is now known about BSE. There is a strong scientific consensus about the BSE agent, the mechanisms for its spread, and the tissues that are most likely to harbor the infective agent. Scientific research, backed by practical experience, has resulted in a defined series of measures that countries can use to keep the BSE agent out of the food and feed chain and thus ensure the safety of animal and public health. APHIS has concluded that such measures are in place in Canada and the United States. The risk analysis contains a comprehensive discussion of the facts and circumstances relevant to Canada's BSE status and of the mitigation measures in place in both Canada and the United States that will ensure that BSE is not introduced into the United States. The critical country-of-origin factors leading to APHIS' conclusion and this finding of no significant impact are:

1. *Import Restrictions*—Canada has implemented effective methods for preventing the introduction of BSE into its herd by restricting the importation of live ruminants and meat-and-bone meal from any country that had not been recognized as BSE-free following a comprehensive risk assessment.

2. *Surveillance*—Canada has been actively monitoring for BSE in its herd since 1992 and has met or exceeded the OIE recommended level of BSE surveillance for the past 7 years. The number of cattle tested annually has steadily increased over the years, and in 2003, approximately 5,700 cattle were tested. In 2004, more than 23,500 animals were tested. In 2005, more than 14,000 samples were tested as of March 23.

3. *Feed Ban*—Canada and the United States implemented substantially identical feed bans simultaneously in 1997 that prohibit the feeding of mammalian protein to ruminants. Canada's feed ban is more stringent than the feed ban in the United States, as it prohibits the use of plate waste and poultry litter in ruminant feed. The Canadian feed ban has been effective and has a strong compliance and enforcement component. It is also important to note that Canada established its feed ban 6 years before identifying its first case of BSE in May 2003.

4. *Epidemiological Investigations*—Canada has the capacity to conduct, and has conducted, rigorous investigations of its BSE findings. These investigations have included trace-outs of cattle that may have been exposed to the same feed sources as infected cattle and of rendered protein products that could have included the tissues from the infected animals. These investigations have been successful due in part to the mandatory cattle identification program in Canada.

5. *Removal of SRMs*—Both Canada and the United States require the removal at slaughter of SRMs—those tissues most likely to harbor the BSE infective agent—and prohibit the use of SRMs in human food.

In addition, there are several biological factors that support the finding herein with specific reference to the importation of live animals and animal products. These factors include: The age of the animal, tissue distribution and infectivity, and feed source and exposure. Our findings with respect to these factors are detailed in the final risk analysis associated with this final rule.[8] Furthermore, as explained in the exposure assessment

[8] See ''Analysis of Risk—Update for the Final Rule: Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities, December 2004,'' pp. 11–17.

component of the risk analysis, our evaluation of slaughter controls in place in both the United States and Canada, rendering inactivation factors, feed manufacturing controls both in the United States and Canada, and of the likelihood that an animal would ingest an infectious dose and would develop the disease provides further support for our finding of no significant impact.

Finally, the additional post-entry mitigation measures imposed by the final rule enhance protection of animal and human health and further ensure that there will be no significant impacts. The MRR rule requires that live cattle under 30 months of age can only enter the United States for immediate slaughter or for feeding and slaughter. Movement of these cattle is carefully controlled by requiring each animal to have permanent identification that identifies its country of origin, and a special permit designed to account for the inventory of cattle consigned to their point of destination. The rule, therefore, ensures that those cattle are identified and remain accounted for through slaughter.

Based on all these factors, APHIS concluded that there was no scientific basis to believe that the importation from Canada of live ruminants (including cattle less than 30 months of age) and ruminant products (including beef products and byproducts) in accordance with the conditions required in the rule pose any risk of introducing BSE into the United States. For all the reasons discussed in section VI.A. of the final EA, the safeguards in place in both the United States and Canada, coupled with the additional risk mitigation measures required in the MRR rule fully protect both animal and public health.

B. The Degree to Which the Effects on the Quality of the Human Environment Are Likely To Be Highly Controversial or the Degree to Which the Possible Effects on the Human Environment Are Highly Uncertain or Involve Unique or Unknown Risks

Controversy exists when substantial questions are raised as to whether an action may cause significant degradation of an environmental factor. In the context of an EA under NEPA, controversy refers not to the existence of public opposition, but to a substantial dispute about the size, nature, or effect of the action. Even if an action is projected to have a controversial effect, the agency nonetheless has the discretion to be guided by the expertise and judgment, as well as the practical experience, of its own experts. There is a presumption in favor of the agency's expert advice and guidance.

In the case of the MRR rule, there is no significant controversy with regard to the science underlying the mitigation measures that form the basis of the rule, and the effectiveness of the mitigation measures that are in place in Canada and the United States or prescribed as additional requirements in this rule. While questions remain about BSE and research continues on BSE as it does for many animal diseases, there is substantial knowledge about the disease and effective mitigation measures, and a solid scientific consensus among animal health experts both in the United States and internationally. Based upon this substantial body of scientific research, field epidemiological investigations and years of practical experience and observations by animal health authorities, very effective measures have been identified to prevent the introduction and spread of BSE and these measures have been put in place in the United States and Canada and are embodied in the MRR rule.

Two principal concerns are expressed in comments filed on the EA in opposition to the MRR rule. First is the perceived risk that BSE would be introduced into domestic cattle and, second, that vCJD could occur as a result of such introduction or through the import of meat products from Canada. APHIS has concluded that the MRR rule will preclude the introduction of BSE and that the comprehensive animal and public health measures in place in Canada and in the United States will prevent these effects from occurring. In this regard, we must note that while APHIS' principal responsibilities encompass animal and plant health, FSIS and the FDA are the agencies principally responsible for public health and food safety. Both of these agencies have implemented regulations to ensure that the BSE agent does not enter either the human or the ruminant food chain.[9] In developing the MRR rule and in preparing the EA, APHIS consulted with both FSIS and FDA.

This rule is based upon and is fully consistent with an international scientific consensus that is embodied in the guidelines and recommendations of the OIE. OIE is the internationally recognized authority on animal health issues and currently has 167 member countries, including the United States and Canada. OIE develops and publishes standards, guidelines and recommendations for international trade in animals and animal products. These standards and guidelines are recognized by the World Trade Organization as the reference international animal health rules for animal diseases and zoonoses and they are codified in the Terrestrial Animal Health Code and the Aquatic Animal Health Code. The standards, guidelines and recommendations are developed by specialist commissions and experts based on the latest and best available scientific research and data and are adopted by consensus of the OIE member countries. The aim of the Terrestrial Animal Health Code is to facilitate the safe international trade of animals and animal products. This is achieved through recommendations on risk management measures for specific diseases to be used by national veterinary authorities or other competent authorities of importing and exporting countries when establishing health regulations for the safe importation of animals and animal products. The aim of the OIE's work in this regard is to avoid the transfer of agents pathogenic for animals and humans, without the imposition of unjustified trade restrictions. With respect to the OIE guidelines for BSE, it is important to note that the OIE does not recommend that an importing country completely ban the importation of live cattle and meat products even when the importing country determines that the exporting country has a high BSE risk status. For the details of the BSE chapter of the Terrestrial Animal Health Code, see *http://www.oie.int/eng/publicat/en_code.htm.*

Many of the 13 commenters on the final EA opposed implementation of the MRR rule out of a concern that BSE would be introduced into the United States, a concern raised in part by the 2 confirmed cases of BSE in Canada in January 2005. These commenters did not elaborate on the basis for their concern or whether they disagreed with the scientific foundation of the MRR rule. On the other hand, some commenters who expressed concerns about the implementation of the MRR rule acknowledged, implicitly or explicitly, the validity of the scientific

[9] See: FSIS' interim final rule published in the **Federal Register** on January 12, 2004, titled ''Prohibition on the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle'' (69 FR 1874–1885, FSIS Docket No. 03–025IF,); FDA interim final rule published in the **Federal Register** on July 14, 2004, titled ''Use of Materials Derived from Cattle in Human Food and Cosmetics'' (69 FR 42255, FDA Docket No. 2004N–0081); FDA's ruminant feed regulations in 21 CFR 589.2000; and an advance notice of proposed rulemaking issued jointly by FDA, FSIS, and APHIS in the **Federal Register** on July 14, 2004, titled ''Federal Measures to Mitigate BSE Risks: Considerations for Further Action'' (69 FR 42288–42300, FDA Docket No. 2004N–0264, FSIS Docket No. 04–021ANPR, APHIS Docket No. 04–047–1).

approach embodied in the rule but urged the agency to ensure that the measures the agency relies upon have been effectively implemented. For example, the state farm bureau federation urged that USDA ''investigate and confirm'' that the current feed ban is being effectively enforced prior to opening the border with Canada. Additionally, the federation urged that USDA assess whether Canada's surveillance program is adequate.

Four cases of BSE have been detected in Canadian-origin cattle. The first two positive cases were detected in 2003 and two cases have been detected in 2005. On January 2, 2005, Canada announced that it had confirmed a case of BSE in an 8-year-old dairy cow in Alberta, Canada.

The following week, on January 11, 2005, Canada announced that it had confirmed a case of BSE in a beef cow in Alberta that was born shortly after the implementation of the feed ban in 1997. Because the cow was born shortly after the implementation of the feed ban and, in addition, to determine if there were any previously unidentified potential links, the USDA sent two technical teams to Canada to evaluate the circumstances surrounding these two recent BSE findings. One team, consisting of USDA and FDA officials, was responsible for conducting an in-depth assessment of Canada's feed ban, and the other team focused on the epidemiological investigations of the positive cases.

In preparing the MRR rule, Canada's compliance with the feed ban was thoroughly considered and discussed. Canada implemented its feed ban in 1997 to prohibit the feeding of most mammalian protein to ruminants. Canada's feed ban is virtually identical to the feed ban in place in the United States, except that Canada has extended its ban by prohibiting plate waste and poultry litter from being fed to ruminants. APHIS concluded, based on this thorough assessment, that Canada has had an effective feed ban in place in the rendering, feed manufacturing and livestock industries. (70 FR 467–468, APHIS Docket No. 03–080–3; ''Analysis of Risk-Update for the Final Rule: Bovine Spongiform Encephalopathy; Minimal Risk Regions and Importation of Commodities, December 2004,'' pp. 7–10; see also BSE in Canada Status Update—March, 2005, which can be found at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/200503canadae.shtml.)*

On February 25, 2005, USDA published its assessment of the Canadian feed ban. The team concluded, based on its review of inspection records for the last 3 years and on-site inspections of commercial feed mills and rendering facilities, that Canada has a robust inspection program with strong enforcement, that overall compliance with the feed ban is good, and that the feed ban is effectively reducing the risk of transmission of BSE. (*http://www.aphis.usda.gov/lpa/issues/bse/bse.html.*) The team's report confirmed the APHIS evaluation of Canada's feed ban which supported the MRR rule.

It is important to note that in 1997, BSE had not been detected in North America, and the feed bans implemented by Canada and the United States were precautionary measures. As a result, neither government required that existing feed stocks be recalled. In Canada specifically, the feed ban was implemented with provisions for a phase-in period so that existing stocks of feed material could be depleted. It is likely that the Canadian feed ban took some time to be implemented completely throughout the feed manufacturing industry, as did the United States' feed ban. This would be expected in implementing a new, comprehensive regulatory program.

With respect to the two most recent positive BSE cases, the Canadian government confirmed that the animal identified as positive on January 2nd was exposed to feed rations containing meat and bone meal that was produced prior to the 1997 feed ban. This animal was born in October 1996 and was exposed to rations that contained meat and bone meal in early 1997, before the feed ban was implemented. In the case confirmed on January 11th, the Canadian investigation concluded that BSE may have been transmitted to the affected animal through feed produced shortly after the feed ban was implemented. As described in the previous paragraph, since an extensive change in industry practices cannot be expected to be completed immediately, a finding of BSE in an animal born shortly after the feed ban would not be unexpected and would not be inconsistent with the risk analysis supporting the final rule. (See BSE in Canada Status Update—March, 2005, which can be found at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/200503canadae.shtml.* See also the summary report of the CFIA investigation of the January 2, 2005, case of BSE at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/ab2005/2investe.shtml* and the summary report of the CFIA investigation of the January 11, 2005, case of BSE at *http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/ab2005/3investe.shtml.*)

The possibility of additional BSE positive animals was understood and carefully considered by APHIS in the risk analysis and in our determination that Canada qualifies as a minimal-risk region. In our final rule (70 FR 514), we acknowledged the possibility that additional BSE-infected cattle might exist in Canada and explained the reason for our confidence that the number of such additional infected animals, if any, would be small. First, Canada has not imported ruminant MBM from any country with BSE since 1978. Second, Canada has prohibited the feeding of ruminant MBM to ruminants since 1997, and CFIA has verified high levels of compliance with the feed ban by routine inspections of both renderers and feed mills. Third, Canada has traced and destroyed all remaining cattle imported from the UK. Fourth, Canada has traced and destroyed the majority of the cattle that comprised the birth cohorts of the two initial Canadian BSE cases, as it has subsequently done with the birth cohorts of the two most recent cases. Fifth, Canada has conducted surveillance for BSE since 1992 and has conducted targeted surveillance at levels that have met or exceeded OIE guidelines since 1995.

As we explained in our final rule, even if BSE-infected cattle do remain in Canada, they are likely to be older animals that were exposed before Canada's feed ban in 1997. Because this rule requires that imported animals be less than 30 months old, such animals could not legally enter the United States under this rule. Further, even if an infected animal did enter the United States, the science, the research, and the experience of animal and public health authorities, supported by the Harvard-Tuskegee Study indicates it would be very unlikely to lead to the introduction of BSE into domestic cattle or to human exposure to the BSE agent.

Several commenters on the EA questioned Canada's feed ban due to press reports published in December 2004 that revealed that animal protein of undetermined origin had been found by CFIA in ruminant feed. As part of its ongoing compliance and enforcement program, the CFIA conducted a small feed sampling and testing program to evaluate the usefulness of direct microscopy. CFIA concluded that microscopy was not capable of distinguishing between animal tissues that pose no animal health risk and those that are prohibited under Canada's

feed ban regulations. In following up on the microscopy results, the CFIA concluded the great majority of samples did not contain prohibited material. Of the 110 samples tested, 65 samples were of Canadian origin, 44 samples were from the United States, and one was from France. Of the 65 samples of Canadian origin, the CFIA was unable to rule out the possibility that some incidental level of prohibited material may have been present in 11 samples. Of the 45 imported samples, animal material was detected in 18. With respect to the Canadian origin samples, the CFIA has taken action to ensure that the establishments involved have improved their recordkeeping, flushing, and/or sequencing procedures. (*http://www.inspection.gc.ca/english/anima/feebet/rumin/microe.shtml.*) Based on our extensive experience and interaction with CFIA program officials over many years, the thorough Canadian report on the microscopy sampling and testing program, as well as the results of the APHIS feed team inquiry, APHIS has concluded that the Canadian feed ban is effective and will accomplish its objective of reducing and eliminating any BSE infectivity that may remain in Canada.

As noted above, several commenters expressed concern that the MRR rule could result in the introduction of BSE into the domestic herd and that vCJD could occur as a result of such introduction or through the import of meat products from Canada. With regard to this concern, there is a solid scientific consensus regarding our knowledge of the cattle tissues that contain BSE infectivity and our knowledge of the modes of transmission of that infectivity. While it is likely that ongoing research will increase our knowledge of the disease agent, APHIS, along with FSIS and FDA, are confident that the measures in place will protect animal and human health. In addition, it seems clear that there is a significant species barrier that protects humans from illness due to exposure to the BSE agent. European scientists working on the outbreak in the UK and subsequent BSE research have suggested that the amount of infective tissue required to infect humans may be 10,000 times greater than the amount needed to infect cattle. During the epidemic in the UK, it was estimated that there were approximately 1 million infected animals and yet, to date, there have been only approximately 153 vCJD cases worldwide, 95 percent of which have occurred in the UK. Current research does not suggest the need for further food safety mitigations and does not alter the conclusion that the appropriate tissues that can carry levels of infectivity sufficient to cause human or animal illness are, in fact, being removed from the animal and human food supply under U.S. and Canadian regulations.

One commenter suggested the need for further assessment of the persistence of the BSE agent in soil, water and air. To date, there is no evidence of environmental transmission of the BSE agent. While such transmission could be theoretically possible, epidemiological reviews do not indicate that such transmissions, even if they occurred, would be a significant issue. In the UK, which has experienced the largest and most significant outbreak, early epidemiological investigations pinpointed feed as the route of transmission. In response to these findings, the UK authorities instituted feed ban regulations that have been strengthened over the years. The feed restrictions have clearly had an effect in preventing transmission of disease, with the number of cases identified annually continuing to decrease from a peak in 1992–1993. Investigations have been done on animals born after the reinforced ban went into effect. These have included evaluating all possible routes of transmission, and they continue to conclude that environmental contamination is an unlikely risk factor. Therefore, based on the best available science, the ability of the BSE agent to persist in soil, water and air is not a significant issue.

While there is evidence that scrapie disease in sheep and chronic wasting disease (CWD) in cervids can be transmitted by environmental contamination, there is no basis for extrapolating these data to BSE in cattle. Research has demonstrated that the distribution of scrapie infectivity in sheep is different than the BSE agent in cattle. For example, infectivity has been found in the placenta of sheep infected with scrapie. This contributes to the lateral transmission (animal-to-animal) of scrapie in sheep, and if placental tissue remains in the environment, it can contribute to environmental contamination. Conversely, in cattle infected with BSE, no infectivity has been demonstrated in placenta and there is no evidence of lateral transmission of the disease. Similarly, animal-to-animal contact appears to contribute to the spread of CWD in cervids, and environmental contamination also appears to be a factor, although the specific means of transmission is unknown. However, these findings cannot be extrapolated to cattle with BSE, as there is no evidence of lateral transmission of BSE or of transmission by environmental contamination.

C. The Degree to Which the Action May Establish a Precedent for Future Action With Significant Effects or Represent a Decision in Principle About a Future Consideration

This criterion requires consideration of whether an action may establish an authoritative rule, pattern, or practice for similar cases that may follow and whether the precedent thereby established could have significant effects on the quality of the human environment.

The MRR rule establishes standards for recognizing regions as presenting a minimal risk of introducing BSE into the United States and provides for the importation of certain ruminants, ruminant products and byproducts from such regions. The minimal-risk region standards and import conditions established by APHIS are designed to prevent the introduction of BSE into the United States. These standards and conditions are buttressed by a series of interlocking, overlapping risk mitigations in place in the United States. The addition of this minimal-risk category to the agency's BSE rules will permit regions that believe they meet the standards to request recognition as a BSE minimal-risk region. We would expect and require that any such request will, in the first instance, comply with § 92.2 of the APHIS regulations, which contains the general procedures for requesting the recognition of regions. (9 CFR 92.2.) The MRR rule, however, designates Canada as the only minimal-risk region for BSE. Before another country or region would be recognized as a BSE minimal-risk region, APHIS would conduct an assessment of all risks involved. If the risk assessment indicated that the region meets the standards and appropriate requirements, APHIS would publish a proposal in the **Federal Register**. At that point, the public would have an opportunity to participate fully and all pertinent issues, questions, and concerns would be addressed in the rulemaking process. Needless to say, any unusual or unique facts or circumstances related to a particular region's request would be carefully evaluated by APHIS as well. For example, the animals or animal products allowed to be imported and the required risk mitigation measures could and would be tailored to each specific region considered. Accordingly, the MRR rule does not establish a precedent for future actions with significant effects or represent a decision in principle about future

approval of additional minimal-risk regions.

D. Whether the Action Is Related to Other Actions With Individually Insignificant but Cumulatively Significant Impacts

The term cumulative impact is defined as an impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The potential for harm to the quality of the human environment lies in the introduction of the BSE agent into the United States and subsequently finding its way into the animal and human food supply where it could be ingested and result in infection. For this chain of events to occur, the multiple animal and human health mitigation measures in place in Canada and the United States, as well as the additional mitigations prescribed by the MRR rule, would have to substantially fail. There is no basis to conclude that such a significant breakdown in the system of interlocking and overlapping measures could ever occur. Similarly, if the agency were to recognize any other regions as minimal-risk regions, there is no reason to believe that the mitigation measures and other requirements imposed in such a rulemaking would be any more likely to be breached and result in harm to animal or human health. It must be remembered that our MRR rule is designed to preclude the introduction of BSE into the United States and APHIS has concluded that the rule will achieve that result. Accordingly, there is no basis to believe that this action, or future actions that the agency may take, could result in cumulatively significant environmental impacts.

Additional Issues: Allegations of Environmental Impacts Raised in Litigation

Shortly after issuance of the final EA for the MRR rule, the Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (''R–CALF''), filed a complaint challenging the rule in the United States District Court for the District of Montana. R–CALF alleged that the final EA was inadequate because, among other things, it failed to assess the environmental effects of transporting what we estimated would be as many as 2 million head of cattle from farms and feedlots in Canada to feedlots and slaughterhouses in the United States, as well as the environmental impacts of feeding and holding these additional feeder cattle until slaughter. Although the plaintiff filed several comments on the rule throughout this rulemaking proceeding, it did not include these concerns in these comments, nor did it file any comment on the final EA published on January 4, 2005. In addition, no other commenter on the EAs raised these potential environmental impact issues. Even though the alleged potential effects pose no significant environmental impact, and were not raised by R–CALF or any other commenter on the EA, we have addressed them below.

The two issues raised by R-CALF did not, and do not now, pose potentially significant impacts. Accordingly, they were not discussed in the final EA. First, it is important to note that the impacts or effects alleged by R-CALF to be significant are not brought about or caused by the MRR final rule. Second, it is also important to understand the MRR rule within the context of the economic relationship that has existed between Canada and the United States for many years. Since the 1970's, the U.S. and Canadian cattle and beef industries operated largely as an integrated North American industry, with both live cattle and processed beef flowing freely between the two countries. For years prior to May 2003, millions of head of live cattle crossed the border in one direction or the other. The two countries have become each other's largest trading partners in agricultural products.

In May 2003, as a result of the finding of BSE in Canada, APHIS published an interim rule to add Canada to the list of countries in which BSE exists. APHIS took this action as a temporary measure while it assessed the facts and circumstances surrounding the BSE situation in Canada. After evaluating the epidemiological investigation of the May 2003 BSE positive cow and after reviewing the BSE risk mitigation measures in place in Canada and the United States, USDA announced in August 2003 that it would begin issuing permits, pursuant to its existing regulations, to allow the importation of certain low-risk meat products from Canada. These products included boneless beef from cattle under 30 months of age, veal, and bovine liver. As a result, within 3 months, a substantial amount of trade in beef and beef products was resumed with Canada. In November 2003, APHIS issued a proposed rule that would again allow the importation of certain live animals, including cattle under 30 months of age, as well as all beef products from cattle under 30 months of age, from Canada. Therefore, the MRR rule would allow the restoration of trade in ruminants and ruminant products under approved mitigations after a temporary suspension of such trade.

The final economic analysis for the MRR rule estimated that as many as 2 million head of cattle could be imported from Canada in 2005, assuming implementation of the MRR rule at the beginning of the year. This estimate was based on historical cattle import data from 2001 and 2002, an estimated backlog of cattle in Canada as a result of the temporary closure of the border to live cattle in 2003, and an estimate of the number of cattle under 30 months of age that would be available for importation into the United States because of an increase in the number of older cattle that would be slaughtered in Canada for the export of beef to the United States. We acknowledged that there was a good deal of uncertainty in projecting the number of cattle that would be imported from Canada and that changes in production, feeding, slaughter and trade patterns and circumstances could well affect the result. In recognition of these uncertainties, we also conducted the analysis using one-half of the assumed backlog and one-half of the assumed number of imported fed cattle displaced from slaughter in Canada.

Using the 2 million number, R–CALF estimated that the resumption of limited trade in live cattle would result in 35,000 truck round-trips between Canada and the United States. Assuming these would represent an actual increase in trips involving live cattle and meat, the truck traffic represented by this estimation is wholly insignificant. For 2003, the incoming truck crossings from Canada into the United States totaled 13.3 million crossings, which included 6.7 million truck crossings, 5.7 million loaded truck container crossings, and 0.9 million unloaded truck container crossings. (*See http://www.bts.gov/programs/international/border_crossing_entry_data/.*) For 2002, the total incoming truck crossings from Canada into the United States were 13.7 million crossings, which included 6.9 million truck crossings, 5.8 million loaded truck container crossings and 1.0 million unloaded truck container crossings. (*Id.*) For 2001, the total incoming truck crossings from Canada into the United States were 13.4 million crossings, which included 6.8 million truck crossings, 5.6 million loaded truck container crossings, and 1.0 million unloaded truck container crossings. (*Id.*)

There is little variation in the annual volume of truck traffic entering the United States from Canada over this 3-year period, and, in addition, an increase of 35,000 truck crossings would be well within the variation shown by the data. Even with an increase of 35,000 truck round-trips between Canada and the United States, the total increase would amount to approximately 1/4 of one percent increase in truck traffic, an amount that is *de minimus* by any measure. An examination of truck traffic through the 20 ports of entry through which importations of live ruminants and ruminant products from Canada are authorized under the MRR rule yields similar conclusions. The 2003 truck crossings at the 20 ports of entry were approximately 11.1 million. (*Id.*) Therefore, an increase of 35,000 truck crossings spread over just these 20 ports of entry would result in less than 1/3 of a one percent increase. It is also important to note that truck traffic between the United States and Canada is merely a subset of all vehicular traffic between the two countries. When considering the total volume of all vehicular traffic traveling across the border with Canada, the environmental impacts associated with an increase of 35,000 truck round-trips are even less significant. Accordingly, R–CALF's claim that increased truck traffic would result in environmental damage is without merit.

R–CALF also alleges that there will be significant environmental effects attendant to the importation of live animals for feeding and for slaughter. R–CALF asserts that these live cattle would be required to be moved to a limited number of feedlots and slaughter facilities in the United States. However, the final regulation contains no limitation on the number of feedlots or slaughter facilities. The MRR rule is merely restoring, for live cattle under 30 months, longstanding trade with Canada, trade that has persisted for years and was only temporarily halted in May 2003 due to the finding of BSE in Canada. There is no reason to believe that these cattle would be destined for a different set of feedlots or slaughter facilities than cattle imported from Canada prior to 2003.

Whatever the potential environmental effects that theoretically might be associated with the importation of live cattle for feeding or for slaughter, there would be a significant difference in the magnitude of such potential effects depending on whether the cattle were being transported directly to slaughter facilities or were destined for feedlots, where they may be fed for some period of time prior to moving to slaughter. The potential environmental effects, while inconsequential, would be significantly less for cattle moved immediately to slaughter facilities. Based on historical data for cattle imports from Canada, between 65 percent and 75 percent of imported cattle have gone directly to slaughter and the remainder (other than the very small number historically imported for breeding) have been transported to feedlots and then to slaughter facilities. Based on the projection in the final economic analysis of 2 million cattle imported, approximately 1.4 million would be moved immediately to slaughter and 600,000 feeder cattle would be moved to feedlots.

Subsequent to the estimates in the final economic analysis and publication of the MRR rule, on February 9, 2005, the Secretary announced that implementation of the part of the MRR rule that would allow for importation of beef from cattle 30 months of age or older would be delayed. Therefore, there was no longer a basis for assuming the displacement from slaughter in Canada of cattle under 30 months of age by cattle 30 months of age or older. The estimate of the number of cattle that would be imported from Canada was revised downward. We further modified the estimate downward to reflect an increase in Canadian slaughter capacity over the past year. Therefore, based on these factors, we estimated that as many as 1.4 million cattle could be imported from Canada in the first year after the effective date of the MRR rule. Of this number, we estimate that 900,000 fed cattle would be moved directly to slaughter facilities and that 500,000 feeder cattle would be sent to feedlots and then to slaughter, further reducing any potential impacts.

On January 6, 2005, the National Cattlemen's Beef Association (NCBA) sent a delegation of U.S. cattle producers to Canada on a fact-finding mission regarding BSE and the MRR rule. One task assigned to the NCBA delegation was to identify Canadian cattle that would qualify for export under the MRR rule and determine the impact on U.S. producers. The NCBA delegation report, dated February 2, 2005 (*http://www.beefusa.org/uDocs/acf985911.pdf*) stated, based on Can-Fax data gathered over a 20-month period of time, that there were approximately 900,000 head of cattle available for export. This consisted of approximately 600,000–700,000 head of fed cattle and approximately 200,000–300,000 feeder cattle. The NCBA report suggested that the import quantities assumed in APHIS' economic analysis were too high. The NCBA report suggests that the APHIS estimate did not fully account for the 22 percent increase in Canadian slaughter capacity between 2003 and 2004. The NCBA report concluded that the delegation agreed with Can-Fax and other private sector estimates and put the likely imports of feeder cattle in the range of 200,000–300,000 during calendar year 2005 and assumed that the MRR rule would be implemented on March 7, 2005.

Under either of APHIS' two estimates, any environmental effects would not be significant. The average annual number of fed cattle slaughtered for the years 2002 and 2003 in the United States was 29 million. Total cattle slaughter, which includes fed cattle, cows and bulls, averaged 35.6 million head annually for the same period. Thus, the estimated maximum imports of cattle for immediate slaughter would amount to approximately 4.8 percent of the total fed cattle slaughter and 3.9 percent of total cattle slaughter spread over a 12-month period. For the years 2003 and 2004, an average of 26.9 million cattle were marketed by U.S. feedlots annually. The estimated number of feeder cattle that may be imported from Canada in the first year (500,000–600,000 head) would represent between 1.8 and 2.2 percent of fed cattle marketed annually in the United States. Even assuming that Canadian feeder cattle actually imported after implementation of the MRR rule represented an actual increase in the number of cattle on feed in the United States, the potential effects would not be significant. The transitory nature of even this volume of imports from Canada is discussed in the final EA, where estimates that imports would decline over the years 2006–2009 are discussed and displayed.

Furthermore, any potential impacts on air and water quality associated with the importation of cattle from Canada are addressed under an array of existing statutes and regulations in the United States. These regulations include the National Pollutant Discharge Elimination System Permit regulations and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO) under the Clean Water Act, as well as State environmental regulations for proper management of manure and wastewater from animal feedlot operations. In addition to state laws and regulations for air emissions, there are a variety of provisions under the Clear Air Act that could address air emissions relating to this activity. The U.S. Environmental Protection Agency has also established requirements for CAFOs under the

Clean Water Act and regarding nitrate contamination of underground sources of drinking water under the Safe Drinking Water Act. The United States' Clean Air Act and Canadian environmental protection laws have vehicle emissions requirements that are designed to prevent harmful air emissions from vehicles, including transport trucks. These activities have a very low potential to negatively affect human health and safety since each is subject to comprehensive environmental regulation in this country and in Canada. Compliance with these requirements by transporters, feedlot operators, and slaughterhouses assures that the quality of the human environment will be safeguarded in all respects. Our border ports are adequately staffed and capable of handling movement of cattle into this country, which will not concentrate at a single border port. Historically, Canadian cattle imported into the United States for slaughter have been shipped to numerous States throughout the United States. Because cattle are not required to be shipped to specific feedlots or slaughter facilities, it is expected that trucks will utilize all available border crossings and highway routes. There is no evidence or data to suggest that our roadways, feedlots, and slaughterhouses, as currently operated, cannot accommodate the resumption of Canadian cattle imports in a manner that fully protects all potentially impacted environmental quality values.

I have determined that the final BSE MRR rule will not have a significant effect on the human environment and accordingly I have decided that it is appropriate to issue a finding of no significant impact for the final MRR rule. Thus, having fully considered the two environmental assessments prepared for the MRR rule, as well as all of the comments submitted on them, along with the reports and analyses referenced in the EA and in the MRR rule, I conclude that the MRR rule will protect animal and human health and the environment. Accordingly, I find that adoption of the MRR final rule and the recognition of Canada as a BSE minimal-risk region will not significantly affect the quality of the human environment.

The finding of no significant impact was signed by Dr. W. Ron DeHaven, Administrator, Animal and Plant Health Inspection Service, on April 5, 2005.

Done in Washington, DC, this 5th day of April 2005.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 05–7141 Filed 4–7–05; 8:45 am]

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; minimal-risk regions and importation of commodities; published 4-8-05

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food Stamp Program:

Performance reporting system; high performance bonuses; published 2-7-05

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; published 3-9-05

Nonavailable articles policy; published 3-9-05

Simplified acquisition procedures for certain commercial items; test program use extended; published 3-9-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona; published 3-9-05

Air quality implementation plans; approval and promulgation; various States:

Maine; published 2-7-05

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Buprofezin; published 4-8-05

Triflumizole; published 4-8-05

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Rural health care support mechanism; published 2-7-05

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

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Nonavailable articles policy; published 3-9-05

Simplified acquisition procedures for certain commercial items; test program use extended; published 3-9-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety:

Humboldt Bay Bar Channel and Humboldt Bay Entrance Channel, CA; regulated navigation area; published 3-9-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Boulder darter and spotfin chub; Tennessee and Alabama reintroduction; published 4-8-05

Migratory bird hunting:

Alaska; 2005 subsistence harvest regulations; published 4-8-05

LABOR DEPARTMENT

Occupational Safety and Health Administration

Pipeline Safety Improvement Act; discrimination complaint procedures; published 4-8-05

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Cost accounting standards administration; published 3-9-05

Nonavailable articles policy; published 3-9-05

Simplified acquisition procedures for certain commercial items; test program use extended; published 3-9-05

PENSION BENEFIT GUARANTY CORPORATION

Electronic filing; annual and actuarial information; published 3-9-05

TRANSPORTATION DEPARTMENT

Transportation Acquisition Regulation (TAR); revision; published 2-7-05

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Occupant crash protection—

Tire pressure monitoring systems; controls and displays; published 4-8-05

TREASURY DEPARTMENT

Comptroller of the Currency

Safety and soundness standards:

Residential mortgage lending practices; guidelines; published 2-7-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Bay leaves; comments due by 4-11-05; published 2-8-05 [FR 05-02322]

Plant-related quarantine, foreign:

Nursery stock; comments due by 4-11-05; published 3-10-05 [FR 05-04705]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

North Dakota; State inspection of poultry and poultry products; comments due by 4-13-05; published 3-14-05 [FR 05-04993]

AGRICULTURE DEPARTMENT

Rural Housing Service

Direct single family housing loans and grants; comments due by 4-11-05; published 2-8-05 [FR 05-02429]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Ocean and coastal resource management:

Florida Keys National Marine Sanctuary, FL; revised management plan; comments due by 4-15-05; published 2-16-05 [FR 05-02949]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Federal speculative position limits; comments due by 4-14-05; published 3-15-05 [FR 05-05088]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further

comments due by 4-15-05; published 3-16-05 [FR 05-05153]

Agusta S.p.A.; comments due by 4-11-05; published 2-10-05 [FR 05-02588]

Airbus; comments due by 4-15-05; published 3-16-05 [FR 05-05138]

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Bombardier; comments due by 4-14-05; published 3-15-05 [FR 05-05012]

Eurocopter France; comments due by 4-11-05; published 2-10-05 [FR 05-02586]

Fokker; comments due by 4-14-05; published 3-15-05 [FR 05-05011]

MD Helicopters, Inc.; comments due by 4-11-05; published 2-10-05 [FR 05-02608]

New Piper Aircraft, Inc.; comments due by 4-11-05; published 2-9-05 [FR 05-02374]

Saab; comments due by 4-14-05; published 3-15-05 [FR 05-05013]

Airworthiness standards:

Special conditions—

Cessna 172R and 172S airplanes; comments due by 4-11-05; published 3-10-05 [FR 05-04745]

Class D airspace; comments due by 4-11-05; published 3-11-05 [FR 05-04134]

Class E airspace; comments due by 4-13-05; published 3-14-05 [FR 05-04980]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Civil rights; Title VI procedures for financial assistance recipients; comments due by 4-15-05; published 2-14-05 [FR 05-02768]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Anthropomorphic test devices:

Occupant crash protection—

SID-IIsFRG side impact crash test dummy, 5th percentile adult female; specifications and qualification requirements; comments due by 4-12-05; published 3-8-05 [FR 05-04432]

Motor vehicle safety standards:

Side impact protection—

Phase-in reporting requirements; comments due by 4-12-05; published 1-12-05 [FR 05-00548]

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Written contracts or agreements for acquisition of property and services for tax administration purposes; returns and return information disclosure; comments due by 4-12-05; published 1-12-05 [FR 05-00636]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Niagara Escarpment, Niagara County, NY; comments due by 4-11-05; published 2-9-05 [FR 05-02489]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1270/P.L. 109–6

To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate. (Mar. 31, 2005; 119 Stat. 20)

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